

**FIRST AMENDMENT OF MEMORANDUM OF AGREEMENT  
BETWEEN THE CITY OF OLYMPIA, WASHINGTON  
AND THE NISQUALLY INDIAN TRIBE**

THIS FIRST AMENDMENT OF MEMORANDUM OF AGREEMENT (“First Amendment”) is entered by and between the City of Olympia, a noncharter 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 that historically served as a water supply source before Olympia developed and commenced use of the McAllister Wellfield; and

WHEREAS, on May 14, 2008 the Nisqually Tribe and Olympia entered a Memorandum of Agreement (“MOA”) that provides a framework and terms and conditions for cooperative work on the shared issues of water supply and water resources stewardship; and

WHEREAS, the MOA provided for Olympia to retain ownership of the McAllister Springs and Abbott Springs properties and negotiate a long term agreement for conservation status and use by the Nisqually Tribe; and

WHEREAS, the City holds fee simple ownership of the McAllister Springs and Abbott Springs properties, consisting of five parcel(s) of land totaling approximately 181.5 acres, more or less; and

WHEREAS, the Olympia City Council on January 10, 2017 took action at a regularly scheduled public meeting to declare the McAllister Springs and Abbott Springs properties (referred to jointly as “McAllister Springs”) as surplus to the needs of the drinking water utility and the City; and

WHEREAS, after implementation of some MOA elements and consideration of on-going costs incurred by the City's drinking water utility ratepayers to maintain the properties, Olympia and the Nisqually Tribe now desire to amend the MOA to provide for the Nisqually Tribe to become the owner of four parcels of real property, all within the McAllister Springs and Abbott Springs properties, totaling 177.2 acres, more or less, subject to perpetual conservation covenants and use restrictions benefiting Olympia; and

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

1. Effective Date. This First Amendment shall take effect on the first date ("Effective Date") when the Nisqually Tribe has duly executed it pursuant to the authorizing resolution of the Tribal Council, which resolution will be attached hereto as **Exhibit A**, and Olympia has duly executed it pursuant to the authorizing resolution of the City Council, which resolution will be attached hereto as **Exhibit B**.
2. Defined Terms. The defined terms set forth in the MOA are incorporated by reference in this First Amendment. In addition, the term "McAllister Springs and Abbott Springs properties" (referred to jointly as "McAllister Springs") means the parcel(s) of land legally described and shown in **Exhibit C**.
3. Purpose and Effect of First Amendment. The Parties intend to change the disposition and plan for ownership of the McAllister Springs and Abbott Springs properties but do not intend to change any other provisions of the MOA. Accordingly, the Parties agree that Section 14 of the MOA is deleted in its entirety and replaced with the provisions of this First Amendment. No other provisions or sections of the MOA are amended hereby and all provisions of the MOA remain in full force and effect.
4. McAllister Springs and Abbott Springs properties Conveyance and Future Use. The Parties agree that Olympia will convey ownership of a portion of the McAllister Springs and Abbott Springs properties (referred to jointly as "McAllister Springs"), AS IS, to the Nisqually Tribe and for Olympia to retain rights to access and use of the entire McAllister Springs and Abbott Springs properties for educational and scientific purposes. The Parties also agree to ensure the entire McAllister Springs and Abbott Springs properties remain in a state of perpetual conservation. The terms, covenants and restrictions of Property Conveyance and Future Use are outlined in a Real Estate Transfer Agreement attached as hereto as **Exhibit D**. The Parties agree that the name of the properties known as McAllister Springs and Abbott Springs should be officially changed to their Nisqually name of She Nah-Num. The Parties agree to support efforts of the Nisqually Tribe to rename the springs by its native Nisqually name.
5. Entire Agreement, Binding Effect, and Relationship to Other Agreements. Together with the MOA, this First Amendment 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 First Amendment 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 First Amendment. 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. Wellfield Operations Agreement
- c. Access/Security Agreement
- d. Data sharing
- e. Stewardship Coalition

Any such agreements entered into by the Parties shall be separate and independent contracts that shall not supersede this First Amendment 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 First Amendment, or the Parties' respective rights and obligations hereunder.

8. 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** – McAllister Springs and Abbott Springs properties' legal description

**EXHIBIT D** – Real Estate Transfer Agreement

9. Counterparts. This First Amendment may be executed in counterparts, each of which shall be deemed to be an original.

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

[Signatures appear on the following page.]

**THE CITY OF OLYMPIA**

**THE NISQUALLY TRIBE**

By: \_\_\_\_\_  
Name: Cheryl Selby  
Title: Mayor  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Farron McCloud  
Title: Chairperson  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Steven R. Hall  
Title: City Manager  
Date: \_\_\_\_\_

**Approved as to form:**

**Approved as to form:**

  
\_\_\_\_\_  
By: Mark Barber  
Title: City Attorney

\_\_\_\_\_  
By: Maryanne Mohan  
Title: Tribal Attorney

**Acknowledgements**

STATE OF WASHINGTON    )  
  : ss.  
COUNTY OF THURSTON    )

On the \_\_\_\_\_ day of \_\_\_\_\_ 2017, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Cheryl Selby, to me known to be the Mayor of the City of Olympia, a municipal corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath states that she is authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.

\_\_\_\_\_  
Signature  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON    )  
  : ss.  
COUNTY OF THURSTON    )

On the \_\_\_\_\_ day of \_\_\_\_\_ 2017, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Steven R. Hall, to me known to be the City Manager of the City of Olympia, a municipal corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath states that he is authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.

\_\_\_\_\_  
Signature  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON    )  
                                     : ss.  
COUNTY OF THURSTON    )

On the \_\_\_\_\_ day of \_\_\_\_\_ 2017, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Farron McCloud, to me known to be the Chairperson of the Nisqually Indian Tribe, a federally recognized Indian tribe, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath states that he is authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.

\_\_\_\_\_  
Signature  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

**EXHIBIT A**  
**Nisqually Indian Tribe Resolution**

**EXHIBIT B**  
**City of Olympia Resolution**



**EXHIBIT C**  
**McAllister Springs Property Description**

Tract 1:

Parcel "A" of Thurston County Boundary Line Adjustment No. 15-118253 TC, recorded under Auditor's File No. 4495088, being more particularly described as follows:

A portion of the South half of Section 19, Township 18 North, Range 1 East, Willamette Meridian, Washington, described as follows;

Commencing at the Southwest corner of said Section 19; thence North 1°58'24" East, 2657.49 feet along the West line of said Section to the West Quarter corner of said Section; thence along the east-west center Section line South 88°29'02" East, 1319.53 feet to the CW 1/16 corner, being the **POINT OF BEGINNING**;

Thence continuing along said line South 88°29'02" East, 3371.91 feet to the centerline of Old Pacific Highway;

Thence along said Highway centerline the following five courses;

Along a curve to the left 104.60 feet, said curve having a radius of 818.51 feet, a delta angle of 7°19'20", and a chord bearing and distance of South 26°30'45" East, 104.53 feet;

Thence South 30°10'24" East, 718.60 feet to a point of curvature;

Thence along a curve to the right 951.43 feet, said curve having a radius of 819.02 feet, a delta angle of 66°33'31", and a chord bearing and distance of South 3°08'50" West, 898.83 feet;

Thence South 36°25'36" West, 247.60 feet to a point of curvature;

Thence along a curve to the right 623.20 feet, said curve having a radius of 819.02 feet, a delta angle of 43°35'50", and a chord bearing and distance of South 58°15'53" West, 608.28 feet;

Thence leaving said centerline North 59°36'57" West, 81.12 feet to the northerly Right-of-Way of said Highway;

Thence continuing North 59°36'57" West, 396.95 feet;

Thence North 66°00'17" West, 636.93 feet;

Thence South 86°13'21" West, 314.20 feet;

Thence North 83°34'34" West, 1144.87 feet to the East line of Short Plat SS-2203, AFN 8709110024, records of Thurston County, Washington;

Thence tracing said Short Plat boundary North 1°29'22" East, 547.61 feet;

Thence North 88°30'38" West, 410.98 feet to the easterly Right-of-Way line of Old Pacific Highway;

Thence continuing North 88°30'38" West, 30.42 feet to the centerline of said Highway;

Thence along said centerline North 8°05'22" West, 173.99 feet to a point of curvature;

Thence along a curve to the left 561.85 feet, said curve having a radius of 1534.98 feet, a delta angle of 20°58'19", and a chord bearing a distance of North 18°34'59" West, 558.72 feet to the West line of the Northeast Quarter of the Southwest Quarter of said Section;

Thence along said West line North 1°39'26" East, 351.81 feet to the **POINT OF BEGINNING**.

**EXCEPTING THEREFROM:** Old Pacific Highway and Burlington Northern Railroad Rights-of-Way.

Tract 2:

Parcel "C" of Thurston County Boundary Line Adjustment No. 15-118253 TC, recorded under Auditor's File No. 4495088 , being more particularly described as follows:

A portion of the South half of Section 19, Township 18 North, Range 1 East, Willamette Meridian, Washington, described as follows;

Commencing at the Southwest corner of said Section 19; thence South 88°40'06" East, 2668.42 feet along the South line of said Section to the South quarter corner; thence along the North-South center Section line North 1°20'25" East, 936.21 feet to the **POINT OF BEGINNING**;

Thence South 83°34'34" East, 479.66 feet;

Thence North 86°13'21" East, 304.72 feet;

Thence South 66°00'17" East, 618.75 feet;

Thence South 59°36'57" East, 394.56 feet to the centerline of Old Pacific Highway;

Thence along said Highway centerline the following five courses;

Along a curve to the right 162.31 feet, said curve having a radius of 819.02 feet, a delta angle of 11°21'17", and a chord bearing and distance of North 87°15'03" West, 162.04 feet;

Thence North 81°34'24" West, 654.30 feet to a point of curvature;

Thence along a curve to the left 295.80 feet, said curve having a radius of 955.37 feet, a delta angle of 17°44'23", and a chord bearing and distance of South 89°32'47" West, 294.62 feet;

Thence South 80°40'36" West, 584.10 feet to a point of curvature;

Thence along a curve to the right 706.22 feet, said curve having a radius of 990.00 feet, a delta angle of 40°52'19", and a chord bearing and distance of North 78°53'15" West, 691.34 feet;

Thence leaving said centerline North 1°29'22" East, 419.42 feet;

Thence South 83°34'34" East, 665.38 feet to the **POINT OF BEGINNING**.

**EXCEPTING THEREFROM:** Old Pacific Highway Right-of-Way.

Tract 3:

That portion of the East 1650 feet of the South half of the Southeast Quarter of Section 19, Township 18 North, Range 1 East, Willamette Meridian, in Thurston County, Washington, lying Southerly of Old Pacific Highway and Northerly of Northern Pacific Railroad Right-of-Way.

Tract 4:

That portion of the Southwest Quarter of the Southeast Quarter of Section 19, Township 18 North, Range 1 East, Willamette Meridian, in Thurston County, Washington, lying Southerly of Old Pacific Highway and West of that parcel of land described in Statutory Warranty Deed recorded under Auditor's File No. 9407150276, Thurston County records.

Tract 5:

That portion of the Southeast Quarter of the Southwest Quarter of Section 19, Township 18 North, Range 1 East, Willamette Meridian, in Thurston County, Washington, lying Southwesterly of Old Pacific Highway and Easterly of that parent parcel of land described in Quit Claim Deed recorded under Auditor's File No. 3312557, Thurston County records.

**EXCEPTING THEREFROM:** Saint Clair Cutoff (Hwy 510) and Burlington Northern Railroad Spur Line Rights-of-Way.

Potable Water Well and System Easement:

An access and maintenance easement over and across Parcels "A" and "C" of Thurston County Boundary Line Adjustment No. 15-118253 TC, recorded under Auditor's File No. 4495088, Thurston County records, for the purpose of maintaining the potable water well and system located on said Parcel "C" that provides water service to Lots 2 and 3 of Short Plat No. SS-2203 recorded in Volume 22, Page 367, Thurston County records, the easement area consists of the existing driveways from Old Pacific Highway, well site, and additional area as may be necessary for the maintenance of said water system, over and across Parcels "A" and "C" as shown on said Boundary Line Adjustment.

## Exhibit D

### Real Estate Transfer Agreement

#### REAL ESTATE TRANSFER AGREEMENT

This REAL ESTATE TRANSFER AGREEMENT ("Agreement") is made by and between the CITY OF OLYMPIA, a municipal corporation organized under the laws 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 jointly and collectively referred to as the "Parties." This Agreement is effective as of the "Effective Date" (as defined below in **Paragraph 14**).

#### RECITALS

A. Olympia is a noncharter code city organized and existing under the laws of the State of Washington, and possesses all the rights, privileges and powers granted thereunder. Olympia is the owner of certain real property located in Thurston County, Washington, in an area commonly known as McAllister Springs, consisting of approximately 177.2 acres, more or less, and legally described on **EXHIBIT A** attached hereto and by this reference incorporated herein ("McAllister Springs Property" or "Property").

B. 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.

C. On May 14, 2008, the Nisqually Tribe and Olympia entered into a Memorandum of Agreement ("MOA") that provides a framework and terms and conditions for cooperative work on the Parties' shared issues of water supply and water resources stewardship.

D. On \_\_\_\_\_, the Parties entered into the First Amendment of Memorandum of Agreement ("First Amendment"), after Olympia's consideration of on-going costs to maintain the McAllister Springs Property. The First Amendment provides for the Nisqually Tribe to become the owner of the McAllister Springs Property as legally described on **EXHIBIT A**.

E. In conjunction with the terms and conditions of the First Amendment, the Parties enter into this Agreement for transfer of the Property by Olympia, as grantor, to the Nisqually Tribe, as grantee, under certain covenants, terms and conditions that shall run with the land and be binding on all present and future owners or occupiers of the Property, their successors, heirs or assigns.

F. The signatories to this Agreement are authorized to execute associated documents, to correct legal descriptions if need be, and to correct scrivener's errors and other errors or omissions that are otherwise in substantial conformance with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Olympia and the Nisqually Tribe agree as follows:

**1. Property.** Olympia hereby agrees to and does sell, grant and convey to the Nisqually Tribe, and the Nisqually Tribe hereby agrees to acquire from Olympia, subject to the terms and conditions set forth herein, the Property legally described on **EXHIBIT A**, subject to the terms, conditions and covenants set forth herein:

**1.1 Land.** Approximately 177.2 acres, more or less, constituting the entire site commonly known as the McAllister Springs Property, less the fee simple parcel retained by Olympia for its water line and service and access related thereto, located in Thurston County, Washington, as shown in a sketch on **EXHIBIT B** attached hereto (the "Land"), comprising tax parcel numbers 21819430100, 21819130101, 21819430200 and 21819440200, and more particularly and legally described on **EXHIBIT A** attached hereto (the "McAllister Springs Property" or "Property"). The Nisqually Tribe agrees that the use of the Land will be restricted by covenants and conditions that shall run with and bind the Land and any present or future owners or occupiers of the Land, and their successors, heirs or assigns.

**1.2 Appurtenances.** All rights, privileges and easements appurtenant to the Land, including without limitation all minerals, oil, gas and other hydrocarbon substances on and under the Land, all development rights, air rights, water, water rights and water stock relating to the Land, and any and all easements, rights-of-way and other appurtenances used in connection with the beneficial use and enjoyment of the Land (all of which are collectively referred to as the "Appurtenances"), subject to covenants and conditions that shall bind the Land as referenced in Paragraph 1.1 above, and existing restrictions, rights and reservations of record.

**1.3 Improvements.** All improvements and fixtures located on the Land, with the exceptions of Olympia's water supply line and hydrant for fire suppression purposes, the residential well house, and the equipment and pumps in the McAllister Springs pump house, all of which Olympia shall retain ownership. Olympia may remove at its own expense, within one year from the recording of the deed conveying the Property to the Nisqually Tribe, the equipment and pumps in the McAllister Springs pump house. If Olympia does not remove the equipment and pumps within the aforesaid time period, the equipment and pumps in the McAllister Springs pump house shall become the property of the Nisqually Tribe.

**1.4 Right of Access.** The Nisqually Tribe shall have the right of access at all reasonable times and to inspect the Land and improvements retained by Olympia upon three (3) days' notice to and consent of Olympia.

The Land and Appurtenances described in **Paragraph 1** above are herein collectively referred to as the "Property."

**2. Consideration.** The consideration to be given by the Nisqually Tribe to Olympia for acquisition of the Property shall consist of the Nisqually Tribe's promises, covenants and assumption of any and all costs related to maintenance, operation, liability, or preservation of the Property in accord with restrictive covenants, together with easements granted to Olympia by the Nisqually Tribe for access for educational and scientific use of McAllister Springs and the pump house located upon the Property, together with easements to access and maintain Olympia's water hydrant and its supply line for fire suppression purposes and to access and maintain the residential well house, all located upon the Property, together with the Nisqually Tribe's agreement to accept the Property in its current state or condition, AS IS, without any change, modification, alteration or repair by Olympia.

**3. Closing Date.** The Closing (the "Closing") shall be held at the offices of the "Escrow Agent," on a mutually acceptable date not later than thirty (30) days after the Effective Date of this Agreement, unless otherwise agreed to by the Parties. The Escrow Agent shall be Thurston County Title Insurance Company, in its capacity as Escrow Agent, located at 105 8<sup>th</sup> Ave SE, Olympia, Washington 98501. On the Closing date, Escrow Agent shall record the Deed to the Nisqually Tribe (as provided in **EXHIBIT C** attached hereto). Olympia and the Nisqually Tribe will use their reasonable best efforts, consistent with and subject to their respective rights and obligations as otherwise set forth in this Real Estate Transfer Agreement, to cause the Closing to occur on or not later than thirty (30) days after the Effective Date of this Agreement.

**4. Title and Survey Matters.**

**4.1 Title Binder.** Promptly after the Effective Date of this Agreement, the Nisqually Tribe shall, at its option, order a preliminary commitment for an ALTA owner's standard coverage title insurance policy describing the Property, showing all matters of record pertaining to the Property and listing the Nisqually Tribe as the prospective named insured. Such preliminary commitment, supplemental reports and true, correct and legible copies of all documents referred to in such preliminary commitment and supplemental reports as conditions or exceptions to title to the Property are collectively referred to herein as the "Title Binder." Nothing herein shall be construed as imposing any cost obligation upon Olympia.

**4.2 Title Review.** Within thirty (30) days of the Effective Date, the Nisqually Tribe shall review the Title Binder and any surveys of the Property, and shall notify Olympia what exceptions to title, if any, affect the marketability or insurability of the title to the Property or which adversely affect the use of the Property. If Olympia shall fail to remove any such exceptions objected to by the Nisqually Tribe from title prior to the Closing date, and the Nisqually Tribe is unwilling to take title subject thereto, the Nisqually Tribe may elect to either terminate this Agreement, or take title despite the existence of such exception. If the Nisqually Tribe elects to terminate, neither the Nisqually Tribe nor Olympia shall have any further liabilities, obligations or rights with regard to this Agreement which shall then become null and void and of no further force or effect.

**4.3 Title Policy.** At Closing, Olympia and the Nisqually Tribe shall cause Title Company to issue a standard ALTA owner's policy ("Title Policy") to the Nisqually Tribe, at the Nisqually Tribe's cost. The Title Policy shall (a) be satisfactory to the Nisqually Tribe, (b) be issued in the amount of the Property value and (c) insure fee simple, indefeasible title to the Property in the Nisqually Tribe. The Title Policy shall contain endorsements as the Nisqually Tribe may require. The Nisqually Tribe's obligation to close this transaction shall be contingent on the Nisqually Tribe's approval, in its sole and absolute discretion of the Title Policy required under this **Paragraph 4**.

**5. Conditions to Nisqually Tribe's Obligations.**

**5.1 Inspection of the Property.** Nisqually Tribe and its employees, representatives, consultants and agents shall have the right and permission from the date Olympia signs this Agreement through the Closing Date (or earlier termination of this Agreement) to enter upon the Property or any part thereof at all reasonable times and from time to time for the purpose, at Nisqually Tribe's cost and expense, of making all tests and/or studies of the Property that Nisqually Tribe may wish to undertake, including, without limitation, soils tests (including borings), toxic and hazardous waste studies, surveys, structural studies and review of zoning, fire, safety and other compliance matters; provided, however, Nisqually Tribe shall indemnify and hold harmless Olympia from and against any mechanic's or other liens or claims that may be filed or asserted against the Property or Olympia as a direct result of any actions taken by Nisqually Tribe in connection with the Property, including but not limited to permitting Olympia to review a written description of Nisqually Tribe's proposed testing and work to ensure same is properly done and will not exacerbate any existing condition of contamination on the Property. Nisqually Tribe shall also provide Olympia with a copy of all soil or environmental test results for the Property. Nisqually Tribe shall reasonably restore the Property to its condition immediately prior to any invasive testing. The effect of the representations and warranties made by Olympia in this Agreement shall not be diminished or deemed to be waived by any inspections, tests or investigations made by Nisqually Tribe or its agents.

**5.2 Appraisal of the Property.** Nisqually Tribe shall have the right to obtain an appraisal at its own expense. Nisqually Tribe's appraiser may enter onto the property as is necessary to appraise the Property.

**5.3 Approval of the Property.** Nisqually Tribe's obligation to acquire the Property shall be subject to and contingent upon Nisqually Tribe's approval, in its sole and absolute discretion, prior to the expiration of the Contingency Period, of all aspects of the Property, including, without limitation, the physical condition of the Property.

**5.4 Contingency Period.** As used herein, the term "Contingency Period" means the period ending at 5:00 p.m. twenty days following the Effective Date of this Agreement.

**5.5 Nisqually Tribe's Right to Terminate.** If Nisqually Tribe's approval, set forth in **Paragraph 5.3** above, is not given in Nisqually Tribe's sole and absolute discretion, Nisqually Tribe shall have the right to terminate this Agreement by sending written notice to Olympia and Escrow Agent (such notice referred to as a "Termination Notice") prior to the expiration of the Contingency Period. If Nisqually Tribe gives its Termination Notice to Olympia, this Agreement shall terminate and neither Nisqually Tribe nor Olympia shall have any further liability to the other under this Agreement.

**5.6 Additional Closing Conditions.** Nisqually Tribe's obligation to acquire the Property shall also be subject to the following conditions that must be satisfied as of Closing.

(i) Prior to Closing, all Contracts (whether written or oral), with respect to the Property shall be terminated in writing. Olympia shall provide Nisqually Tribe, prior to Closing, with written termination agreements with respect to any and all Contracts;

(ii) All representations and warranties of Olympia contained herein, to the best of Olympia's knowledge, shall be true, accurate and complete at the time of the Closing as if made again at such time;

(iii) Olympia shall have performed all obligations to be performed by it hereunder on or before Closing (or, if earlier, on or before the date set forth in this Agreement for such performance);

(iv) At Closing, title to the Property shall be in the condition required by **Paragraph 5** of this Agreement and Escrow Agent shall deliver the Title Policy to Nisqually Tribe; and

(v) At Closing, the physical condition of the Property shall be substantially the same as on the date hereof, ordinary wear and tear excepted.

If the conditions set forth in this **Paragraph 5** are not satisfied as of Closing and Nisqually Tribe does not waive the same, Nisqually Tribe may terminate this Agreement, and thereafter neither Nisqually Tribe nor Olympia shall have any further liability to the other under this Agreement.

**6. Olympia's Representations and Warranties.** Olympia hereby makes the following representations and warranties, to the best of Olympia's knowledge, which representations and warranties shall be deemed made by Olympia to the Nisqually Tribe also as of the Closing date:



**6.1 Title.** Olympia is the sole owner of the Property, except for reservations of record. At Closing, Olympia shall convey fee simple estate and right, title and interest in and to the Property by statutory warranty deed to the Nisqually Tribe, free and clear of unapproved encumbrances of record, subject to certain restrictive covenants as set forth in **EXHIBIT C** attached hereto and incorporated herein by reference, together with conveyance of easements to Olympia by the Nisqually Tribe as set forth in **Paragraph 2** above.

**6.2 Compliance with Law; Compliance with Property Restrictions.** The Property complies in all material respects (both as to condition and use) with all applicable statutes, ordinances, codes, rules and regulations of any governmental authority having jurisdiction over the Property related to zoning, building, subdivision, and engineering.

**6.3 Bankruptcy, etc.** No bankruptcy, insolvency, rearrangement or similar action involving Olympia or the Property, whether voluntary or involuntary, is pending, threatened by a third party, or contemplated by Olympia.

**6.4 Taxes and Assessments.** Other than amounts disclosed by the Title Binder, no other property taxes have been or will be assessed against the Property for the current tax year, and there are no general or special assessments or charges that have been levied, assessed or imposed on or against the Property.

**6.5 Foreign Person.** Olympia is not a foreign person and is a “United States Person” as such term is defined in Section 7701(a) (30) of the Internal Revenue Code of 1986, as amended (the “Code”) and shall deliver to the Nisqually Tribe prior to the Closing an affidavit evidencing such fact and such other documents as may be required under the Code.

**6.6 Mechanics’ Liens.** No labor, material or services have been furnished in, on or about the Property or any part thereof as a result of which any mechanics’, laborers’ or materialmen’s liens or claims might arise.

**6.7 Underground Storage Tanks.** Olympia has no knowledge of (a) subterranean storage or underground storage tanks that exist on the Property, and (b) any previously existing underground storage tanks that have been removed or filled by Olympia in compliance with applicable law.

**6.8 Leases and Other Agreements.** Olympia represents that there are no leases, occupancy agreements, service agreements, licenses, easements, or option agreements with regard to the Property, except those reservations of record.

**6.9 Assumption of Liabilities.** The Nisqually Tribe, by virtue of the acquisition of the Property, will not be required to satisfy any obligation of Olympia arising prior to the Closing date.

**6.10 Defaults.** Olympia is not in default and there has occurred no uncured event which, with notice, the passage of time or both would be a default, under any contract, agreement, lease, encumbrance, or instrument pertaining to the Property.

**6.11 Utilities.** The Property is served by an onsite septic system and electricity.

**6.12 Public Improvements.** Olympia has no knowledge of any federal, state, county, municipal or other governmental plans to change the road system in the vicinity of the Property.

**6.13 Subdivision.** The conveyance of the Property will not constitute a violation of any subdivision ordinance. The improvements on the Property comply in all material respects with all applicable subdivision ordinances and statutes.

**6.14 Due Authority.** Olympia and the Nisqually Tribe have all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by Olympia and/or Nisqually Tribe and constitute their legal, valid and binding obligation enforceable against Olympia and Nisqually Tribe in accordance with its terms.

**6.15 No Omissions.** The copies of any documents furnished to the Nisqually Tribe in connection with this transaction are true and complete copies of the documents they purport to be and contain no untrue statement of material fact and do not omit to state any material facts necessary to make the statements contained therein not misleading.

**7. Covenants of Olympia.** Olympia covenants and agrees as follows:

**7.1 Perform Obligations.** From the date of this Agreement to the Closing date, Olympia will perform any monetary and non-monetary obligations it has regarding the Property.

**7.2 No Liens.** From the date of this Agreement to the Closing date, Olympia will not allow any lien to attach to the Property, nor will Olympia grant, create, or voluntarily allow the creating of, or amend, extend, modify or change, any easement, right-of-way, encumbrance, restriction, covenant, lease, license, option or other right affecting the Property or any part thereof without the Nisqually Tribe's written consent first having been obtained.

**7.3 Provide Further Information.** From the date of this Agreement to the Closing date, Olympia will notify the Nisqually Tribe of each event of which Olympia becomes aware affecting the Property or any part thereof immediately upon learning of the occurrence of such event.

## **8. Closing.**

**8.1 Time and Place.** Provided that all the contingencies set forth in this Agreement have been previously fulfilled, the Closing shall take place at the place and time determined as set forth in **Paragraph 3** of this Agreement.

**8.2 Documents to be Delivered by Olympia.** For the consideration to Olympia as described in **Paragraph 2** herein, Olympia shall obtain and deliver to the Nisqually Tribe at Closing the following documents (all of which shall be duly executed and acknowledged where required):

(i) **Title Documents.** Such other documents, including, without limitation, lien waivers, indemnity bonds, indemnification agreements, and certificates of good standing as shall be required by the Nisqually Tribe, or by the Title Company as a condition to its insuring the Nisqually Tribe's fee simple title to the Property.

(ii) **Authority.** Such evidence as the Title Company shall require as to authority of Olympia to convey the Property to the Nisqually Tribe.

(iii) **Surveys and Drawings.** Copies of all surveys, site plans and plans and specifications relating to the Property as are in the possession or control of Olympia, if any.

(iv) **Warranty Deed.** A statutory warranty deed ("Deed") conveying to the Nisqually Tribe indefeasible title in fee simple absolute to the Property, as specified in **EXHIBIT C** attached hereto and incorporated herein by reference.

(vi) **Restrictive Covenant.** A restrictive covenant or other mutually agreeable document that limits the use of the land. The restrictive covenant may be part of the Deed as specified in **EXHIBIT C** or be a separate document.

**8.3 Documents to be Delivered by Nisqually Tribe.** A restrictive covenant or other mutually agreeable document that limits use of the land, which may be part of the Deed as specified in **EXHIBIT C** attached hereto or be a separate document. Easements for access and maintenance shall also be conveyed by the Nisqually Tribe to Olympia as set forth in **Paragraph 2** above. Such easements may be part of the Deed or be a separate document as provided in **EXHIBIT D** attached hereto.

**8.4 Payment of Costs.** At Closing, the Nisqually Tribe shall pay all charges for title insurance, recording fees, technology fee and all other escrow fees.

**8.5 Taxes.** Olympia is exempt from payment of real property excise taxes for the Property pursuant to WAC 458-61A-205.

**8.6 Monetary Liens.** Olympia shall pay or cause to be satisfied at or prior to Closing all monetary liens on or with respect to all or any portion of the Property, including, but not limited to, mortgages, deeds of trust, security agreements, assignments of leases, rents and/or easements, judgment liens, tax liens (other than those for taxes not yet due and payable) and financing statements, except where Olympia is exempt by statute or administrative rule or regulation.

**8.7 Possession.** Possession of the Property shall be delivered to the Nisqually Tribe at Closing. The Property, including without limitation the Improvements, shall be delivered to the Nisqually Tribe in AS IS condition.

**8.8 Prorations.** All amounts required to be prorated hereunder as of Closing, shall be calculated as if the Nisqually Tribe was in possession of the Property as of the date of Closing.

**9. Indemnification.** Olympia shall pay, protect, pay the defense costs of, indemnify and hold Nisqually Tribe and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) the breach of any representation, warranty or agreement of Olympia set forth in this Agreement, (b) the failure of Olympia to perform any obligation required by this Agreement to be performed by Olympia, (c) the ownership, maintenance, and/or operation of the Property by Olympia prior to the Closing, not in conformance with this Agreement, or (d) any injuries to persons or property from any cause occasioned in whole or in part by any acts or omissions of Olympia, its representatives, employees, contractor or suppliers that occurred before Closing; provided, however, that nothing in this **Paragraph 9** applies to Losses arising out of the presence of Hazardous Substance on, under, above, or about the Property, including Hazardous Substances that migrate or migrated to or from the Property.

**10. Casualty.** If any fire, windstorm or casualty occurs and materially affects all or any portion of the Property on or after the date of this Agreement and prior to the Closing, the Nisqually Tribe may elect, by written notice to Olympia, to terminate this Agreement and the escrow created pursuant hereto and be relieved of its obligation to acquire the Property. If the Nisqually Tribe terminates this Agreement, neither the Nisqually Tribe nor Olympia shall have any further liability to the other hereunder. If the Nisqually Tribe fails to make such election prior to the Closing date, this Agreement shall continue in effect. Olympia shall forthwith notify the Nisqually Tribe in writing of any such casualty respecting the Property.

**11. Notices.** Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any party (collectively, "Notices") shall be in writing and shall be validly given or made to another party if delivered either personally or by Federal Express, UPS, USPS or other overnight delivery service of recognized standing, or if deposited in the United States mail, certified, registered, or express mail with postage prepaid. If such Notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such Notice is delivered by Federal Express or other overnight delivery service of recognized standing, it shall be deemed

given twenty four (24) hours after the deposit thereof with such delivery service. If such Notice is mailed as provided herein, such shall be deemed given forty-eight (48) hours after the deposit thereof in the United States mail. Each such Notice shall be deemed given only if properly addressed to the party to whom such notice is to be given as follows:

To the Nisqually Tribe: Chairperson  
Nisqually Indian Tribe  
4820 She-Nah-Num Dr SE  
Olympia, WA 98513-9105

With a required copy to: Office of the Tribal Attorney  
Nisqually Indian Tribe  
4820 She-Nah-Num Dr SE  
Olympia, WA 98513-9105

To City of Olympia: City Manager  
City of Olympia  
601 4<sup>th</sup> Avenue East  
PO Box 1967  
Olympia, WA 98507-1967

With a required copy to: City Attorney  
City of Olympia  
601 4<sup>th</sup> Avenue East  
PO Box 1967  
Olympia, WA 98507-1967

Any party hereto may change its address for the purpose of receiving notices as herein provided by a written notice given in the manner aforesaid to the other party hereto.

**12. Event of Default.** In the event of a default under this Agreement by Olympia (including a breach of any representation, warranty or covenant set forth herein), the Nisqually Tribe shall be entitled, in addition to all other remedies, to seek specific performance of Olympia's obligations hereunder.

**13. Miscellaneous.**

**13.1 Applicable Law and Venue.** This Agreement shall in all respects, 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.

### **13.2 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 written 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 thirty (30) days. Any request for Step One dispute resolution shall be deemed to defer the Closing date of this Agreement until resolution of the dispute or disagreement. If resolution is not reached within thirty (30) days, the Parties shall proceed to mediation.

**(B) Step Two – Mediation.** If the dispute has not been resolved by negotiation within thirty (30) 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 sixty (60) days. If the mediation is not successful within sixty (60) days, the Parties may proceed to litigation. Any request for Step Two dispute resolution shall be deemed to defer the Closing date of this Agreement until resolution of the dispute or disagreement.

**(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 United States 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.

**13.3 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 or enforce the restrictive covenants and conditions of the Deed attached hereto as **EXHIBIT C** and incorporated herein by reference.

**(A) Forum.** Any dispute, claim, or action arising out of or relating to this Agreement, or any breach hereof or violation of any of the restrictive covenants and conditions of the Deed attached hereto as **EXHIBIT C**, now or in the future, shall be brought in the State of Washington, Thurston County Superior Court or the United States District Court for the Western District of Washington at Tacoma. For such purposes, 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 this 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 this Agreement) or resolving a dispute relating to the foregoing, including enforcement of the terms of the restrictive covenants and conditions relating to the Deed to be recorded at Closing. Said waiver shall not extend or apply to any other subject matter whatsoever.

**(C) Consent to Service of Process.** 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 **Paragraph 11** above.

**(D) Construction of Waiver of Sovereign Immunity.** 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 or entity other than Olympia.

**13.4 Covenant Not to Sue.** Other than suits brought under **Paragraph 13.3** 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 this Agreement.

**13.5 Further Assurances.** Each of the Parties shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder, to carry out the intent of the Parties hereto.

**13.6 Modification or Amendment, Waivers.** No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by all of the Parties hereto. No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in this Agreement. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

**13.7 Successors and Assigns.** All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the Parties hereto and their respective heirs, legal representatives, successors and assigns. 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.

**13.8 Entire Agreement and No Third Party Beneficiaries.** This Agreement constitutes the entire understanding and agreement of the Parties with respect to its subject matter and any and all prior agreements, understandings or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect. The Parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the Parties.

**13.9 Attorneys' Fees.** Should either party bring suit to enforce this Agreement or the restrictive covenants and conditions set forth in the Deed attached hereto as **EXHIBIT C**, the substantially prevailing party in such lawsuit shall be entitled to an award of its reasonable attorneys' fees and costs incurred in connection with such lawsuit.

**13.10 Construction.** Captions are solely for the convenience of the Parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both parties had prepared it. If the date on which the Nisqually Tribe or Olympia is required to take any action under the terms of this Agreement and it is not a business day, the action shall be taken on the next succeeding business day.

**13.11 Partial Invalidity and Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or



unenforceable, shall not be affected thereby; and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**13.12 Survival.** The covenants, agreements, obligations to indemnify, representations and warranties made in this Agreement shall survive the Closing unimpaired and shall not merge into the Deed and the recordation thereof.

**13.13 Time.** Time is of the essence of every provision of this Agreement.

**13.14 Force Majeure.** Performance by Olympia or the Nisqually Tribe of their obligations under this Agreement shall be extended by the period of delay caused by force majeure. Force majeure is war, natural catastrophe, strikes, walkouts or other labor industrial disturbance, order of any government, court or regulatory body having jurisdiction, shortages, blockade, embargo, riot, civil disorder, or any similar cause beyond the reasonable control of the Party who is obligated to render performance (but excluding financial inability to perform, however caused).

**13.15 Recitals.** The Recitals set forth above are incorporated by this reference into this Agreement.

**14. Effective Date.** The term, “date of this Agreement,” or “date hereof,” or “Effective Date,” as used herein shall mean the later of the following dates: (1) the date of the Nisqually Tribe’s signature; or (2) the date of Olympia’s signature.

[Signatures appear on the following page.]

**SELLER:**

**CITY OF OLYMPIA**, a Washington  
municipal corporation

By: \_\_\_\_\_  
Print Name: Cheryl Selby  
Its: Mayor  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: Steven R. Hall  
Its: City Manager  
Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Mark Barber, City Attorney

**BUYER:**

**THE NISQUALLY INDIAN TRIBE**, a  
federally recognized Indian tribe

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: Chairperson  
Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Maryanne Mohan, Tribal Attorney

## EXHIBIT A

### Tract 1:

Parcel "A" of Thurston County Boundary Line Adjustment No. 15-118253 TC, recorded under Auditor's File No. 4495088, being more particularly described as follows:

A portion of the South half of Section 19, Township 18 North, Range 1 East, Willamette Meridian, Washington, described as follows;

Commencing at the Southwest corner of said Section 19; thence North 1°58'24" East, 2657.49 feet along the West line of said Section to the West Quarter corner of said Section; thence along the east-west center Section line South 88°29'02" East, 1319.53 feet to the CW 1/16 corner, being the **POINT OF BEGINNING**;

Thence continuing along said line South 88°29'02" East, 3371.91 feet to the centerline of Old Pacific Highway;

Thence along said Highway centerline the following five courses;

Along a curve to the left 104.60 feet, said curve having a radius of 818.51 feet, a delta angle of 7°19'20", and a chord bearing and distance of South 26°30'45" East, 104.53 feet;

Thence South 30°10'24" East, 718.60 feet to a point of curvature;

Thence along a curve to the right 951.43 feet, said curve having a radius of 819.02 feet, a delta angle of 66°33'31", and a chord bearing and distance of South 3°08'50" West, 898.83 feet;

Thence South 36°25'36" West, 247.60 feet to a point of curvature;

Thence along a curve to the right 623.20 feet, said curve having a radius of 819.02 feet, a delta angle of 43°35'50", and a chord bearing and distance of South 58°15'53" West, 608.28 feet;

Thence leaving said centerline North 59°36'57" West, 81.12 feet to the northerly Right-of-Way of said Highway;

Thence continuing North 59°36'57" West, 396.95 feet;

Thence North 66°00'17" West, 636.93 feet;

Thence South 86°13'21" West, 314.20 feet;

Thence North 83°34'34" West, 1144.87 feet to the East line of Short Plat SS-2203, AFN 8709110024, records of Thurston County, Washington;

Thence tracing said Short Plat boundary North 1°29'22" East, 547.61 feet;

Thence North 88°30'38" West, 410.98 feet to the easterly Right-of-Way line of Old Pacific Highway;

Thence continuing North 88°30'38" West, 30.42 feet to the centerline of said Highway;

Thence along said centerline North 8°05'22" West, 173.99 feet to a point of curvature;

Thence along a curve to the left 561.85 feet, said curve having a radius of 1534.98 feet, a delta angle of 20°58'19", and a chord bearing a distance of North 18°34'59" West, 558.72 feet to the West line of the Northeast Quarter of the Southwest Quarter of said Section;

Thence along said West line North 1°39'26" East, 351.81 feet to the **POINT OF BEGINNING**.

**EXCEPTING THEREFROM:** Old Pacific Highway and Burlington Northern Railroad Rights-of-Way.

### Tract 2:

Parcel "C" of Thurston County Boundary Line Adjustment No. 15-118253 TC, recorded under

Auditor's File No. 4495088 , being more particularly described as follows:

A portion of the South half of Section 19, Township 18 North, Range 1 East, Willamette Meridian, Washington, described as follows;

Commencing at the Southwest corner of said Section 19; thence South 88°40'06" East, 2668.42 feet along the South line of said Section to the South quarter corner; thence along the North-South center Section line North 1°20'25" East, 936.21 feet to the **POINT OF BEGINNING**;

Thence South 83°34'34" East, 479.66 feet;

Thence North 86°13'21" East, 304.72 feet;

Thence South 66°00'17" East, 618.75 feet;

Thence South 59°36'57" East, 394.56 feet to the centerline of Old Pacific Highway;

Thence along said Highway centerline the following five courses;

Along a curve to the right 162.31 feet, said curve having a radius of 819.02 feet, a delta angle of 11°21'17", and a chord bearing and distance of North 87°15'03" West, 162.04 feet;

Thence North 81°34'24" West, 654.30 feet to a point of curvature;

Thence along a curve to the left 295.80 feet, said curve having a radius of 955.37 feet, a delta angle of 17°44'23", and a chord bearing and distance of South 89°32'47" West, 294.62 feet;

Thence South 80°40'36" West, 584.10 feet to a point of curvature;

Thence along a curve to the right 706.22 feet, said curve having a radius of 990.00 feet, a delta angle of 40°52'19", and a chord bearing and distance of North 78°53'15" West, 691.34 feet;

Thence leaving said centerline North 1°29'22" East, 419.42 feet;

Thence South 83°34'34" East, 665.38 feet to the **POINT OF BEGINNING**.

**EXCEPTING THEREFROM:** Old Pacific Highway Right-of-Way.

Tract 3:

That portion of the East 1650 feet of the South half of the Southeast Quarter of Section 19, Township 18 North, Range 1 East, Willamette Meridian, in Thurston County, Washington, lying Southerly of Old Pacific Highway and Northerly of Northern Pacific Railroad Right-of-Way.

Tract 4:

That portion of the Southwest Quarter of the Southeast Quarter of Section 19, Township 18 North, Range 1 East, Willamette Meridian, in Thurston County, Washington, lying Southerly of Old Pacific Highway and West of that parcel of land described in Statutory Warranty Deed recorded under Auditor's File No. 9407150276, Thurston County records.

Tract 5:

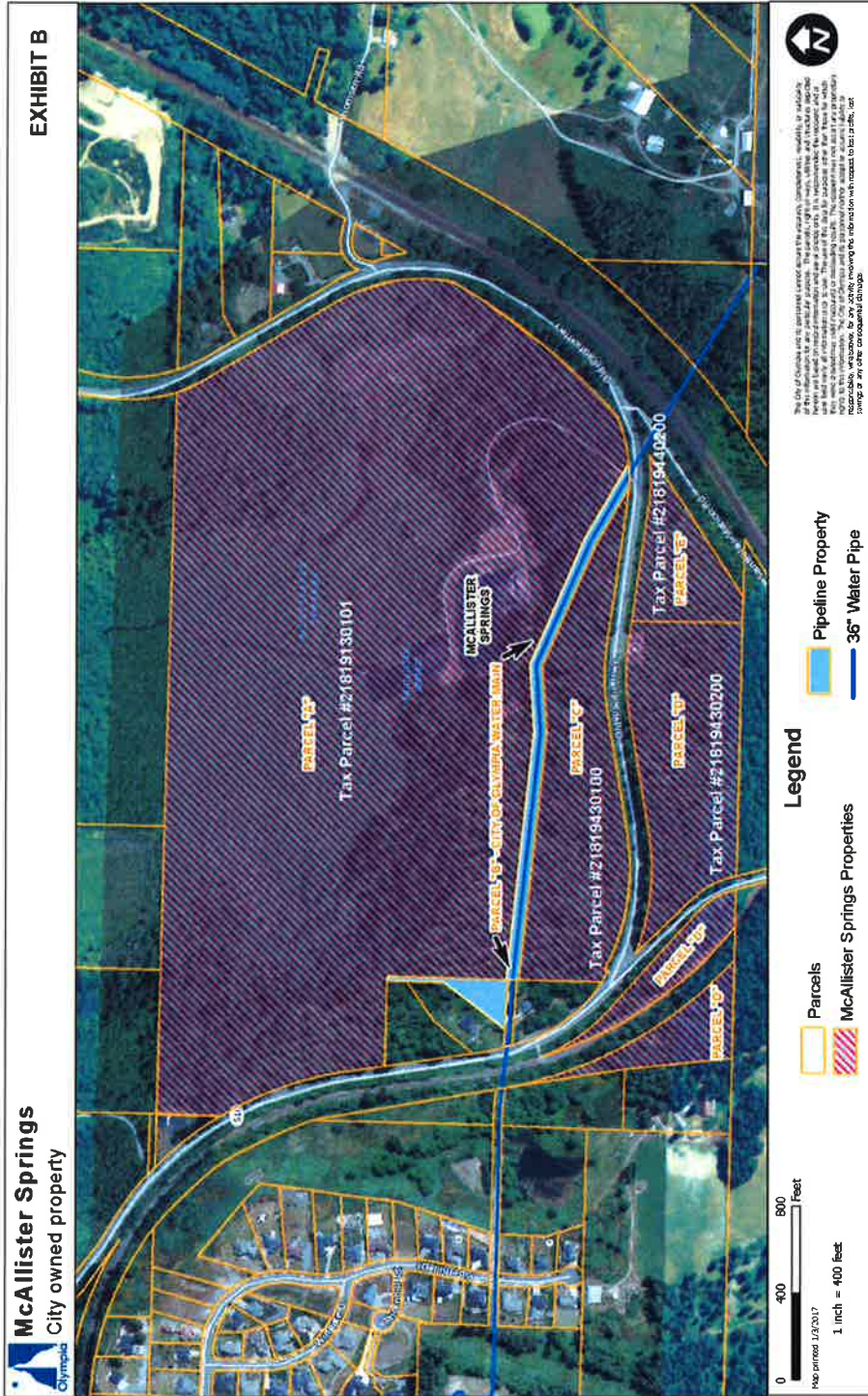
That portion of the Southeast Quarter of the Southwest Quarter of Section 19, Township 18 North, Range 1 East, Willamette Meridian, in Thurston County, Washington, lying Southwesterly of Old Pacific Highway and Easterly of that parent parcel of land described in Quit Claim Deed recorded under Auditor's File No. 3312557, Thurston County records.

**EXCEPTING THEREFROM:** Saint Clair Cutoff (Hwy 510) and Burlington Northern Railroad Spur Line Rights-of-Way.

Potable Water Well and System Easement:

An access and maintenance easement over and across Parcels "A" and "C" of Thurston County Boundary Line Adjustment No. 15-118253 TC, recorded under Auditor's File No. 4495088, Thurston County records, for the purpose of maintaining the potable water well and system located on said Parcel "C" that provides water service to Lots 2 and 3 of Short Plat No. SS-2203 recorded in Volume 22, Page 367, Thurston County records, the easement area consists of the existing driveways from Old Pacific Highway, well site, and additional area as may be necessary for the maintenance of said water system, over and across Parcels "A" and "C" as shown on said Boundary Line Adjustment.

# EXHIBIT B Sketch of Property/Land



**EXHIBIT C**  
**Form of Deed**

**AFTER RECORDING MAIL TO:**

ATTN: Chairperson  
Nisqually Indian Tribe  
4820 She-Nah-Num Dr SE  
Olympia, WA 98513-9105

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<b>Document Title:</b>	<b>Statutory Warranty Deed</b>
<b>Grantor:</b>	<b>City of Olympia</b>
<b>Grantee:</b>	<b>Nisqually Indian Tribe</b>
<b>Legal Description:</b>	<b>TR A &amp; C of BLA-15118253-TC, PT of SE SW &amp; SW SE lying South &amp; West of Old Pacific HWY, PT of SE lying South of Old Pacific HWY &amp; West of BNSF Railroad, all with Section 19, T18N, R1E</b>
<b>Assessor's Tax Parcel Numbers:</b>	<b>21819130101, 21819430100, 21819430200, and 21819440200</b>

The Grantor, **CITY OF OLYMPIA**, a municipal corporation, for and in consideration of the sum of TEN and NO/100 Dollars (\$10.00), and other valuable considerations, in hand paid, hereby conveys and warrants to the **NISQUALLY INDIAN TRIBE**, a federally recognized Indian tribe, as Grantee, the following described real estate and all rights thereto, situated in the County of Thurston, in the State of Washington (hereafter referred to as the "Property"), including all after acquired title:

**See legal description attached hereto as EXHIBIT A.**

**RESTRICTIVE COVENANTS**

As additional consideration, Grantor declares and Grantee agrees that the Property legally described above shall be held, transferred, sold, conveyed, leased, used and occupied subject to the following covenants and restrictions:

The following uses, acts and practices upon, under or above the Property are prohibited:

1. To store, dump, or otherwise dispose of toxic and/or hazardous materials or refuse, trash, garbage, animal carcasses, wildlife-attracting materials, or any other material which could reasonably be considered debris, with the exception of the placement of salmon carcasses for habitat enhancement;
2. To convert native vegetation to exotic species, farming, plowing, or any type of non-silvicultural cultivation;

3. To introduce or release non-native animal species;
4. To graze or pasture livestock;
5. To construct or place any commercial buildings, mobile homes, billboards, utility or cellular towers upon the Property, with the exception of structures or buildings associated with ceremonial, cultural, fisheries, environmental, or maintenance purposes.
6. To thin or harvest timber, or to remove any trees, whether standing or on the ground, with the exceptions of hand-gathering non-timber products (e.g., medicinal and edible plants, berries, grasses, cedar bark, florist greens), the harvest of cedar trees for Grantee's cultural and religious purposes, removal from the Property of wind-thrown, fallen, dangerous or diseased trees posing a threat to public safety or threaten the health of the resources on the Property, and to permit building construction associated with ceremonial, cultural, fisheries, or environmental purposes. Any removed trees, as set forth herein, shall remain the property of the Grantee and may be disposed of as Grantee deems appropriate;
7. To remove, demolish, or fail to maintain for its historical and educational values, the McAllister Springs pump house, except in the event of a force majeure event. A force majeure event is one where the Grantee is prevented from performing any one or more obligations under this restrictive covenant and will be excused from performing those obligations. For purposes of this restrictive covenant, "force majeure event" means, with respect to Grantee, any event or circumstance, regardless of whether it was foreseeable, that was not caused by the Grantee and that prevents the Grantee from complying with any of its obligations under this restrictive covenant, other than an obligation to pay money, on condition that the Grantee uses reasonable efforts to do so. Upon occurrence of a force majeure event, the Grantee shall promptly notify the Grantor of occurrence of a force majeure event, its effect on performance, and how long the Grantee expects it to last or if the event is permanent due to earthquake, fire, windstorm or other natural hazard or event;
8. To use, repair, relocate or tamper with the City of Olympia's fire hydrant and water supply line located upon the Property, which shall only be used for fire suppression purposes and which shall be maintained and managed by the City of Olympia's water resources utility;
9. To use, repair, relocate or tamper with the residential well house and water supply line located upon the Property;
10. To use either McAllister Springs or McAllister Creek for consumptive water uses, with the exception of Grantee's water use for tribal, cultural or ceremonial purposes.
11. To do any action that impacts or impairs the McAllister Wellfield water rights of the Grantor, City of Olympia; and
12. To restrict or prevent the Grantor, City of Olympia, or any state or governmental agency, from accessing existing groundwater monitoring wells located upon the Property, or the installation of new monitoring wells for the purpose of the Grantor, City of Olympia, complying





of Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON )  
                                      : ss.  
COUNTY OF THURSTON )

On the \_\_\_\_\_ day of \_\_\_\_\_ 2017, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Steven R. Hall, to me known to be the City Manager of the City of Olympia, a municipal corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath states that he is authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.

\_\_\_\_\_  
Signature  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

**GRANTEE:**

Accepted and Approved:

**NISQUALLY INDIAN TRIBE**, a federally recognized Indian tribe

By: \_\_\_\_\_  
Farron McCloud, Chairperson

**Approved as to form:**

By: \_\_\_\_\_  
Maryanne Mohan, Tribal Attorney

STATE OF WASHINGTON )

: ss.

COUNTY OF THURSTON )

On the \_\_\_\_ day of \_\_\_\_\_ 2017, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Farron McCloud, to me known to be the Chairperson of the Nisqually Indian Tribe, a federally recognized Indian tribe, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath states that he is authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.

\_\_\_\_\_  
Signature  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

## EXHIBIT A

### Tract 1:

Parcel "A" of Thurston County Boundary Line Adjustment No. 15-118253 TC, recorded under Auditor's File No. 4495088, being more particularly described as follows:

A portion of the South half of Section 19, Township 18 North, Range 1 East, Willamette Meridian, Washington, described as follows;

Commencing at the Southwest corner of said Section 19; thence North 1°58'24" East, 2657.49 feet along the West line of said Section to the West Quarter corner of said Section; thence along the east-west center Section line South 88°29'02" East, 1319.53 feet to the CW 1/16 corner, being the **POINT OF BEGINNING**;

Thence continuing along said line South 88°29'02" East, 3371.91 feet to the centerline of Old Pacific Highway;

Thence along said Highway centerline the following five courses;

Along a curve to the left 104.60 feet, said curve having a radius of 818.51 feet, a delta angle of 7°19'20", and a chord bearing and distance of South 26°30'45" East, 104.53 feet;

Thence South 30°10'24" East, 718.60 feet to a point of curvature;

Thence along a curve to the right 951.43 feet, said curve having a radius of 819.02 feet, a delta angle of 66°33'31", and a chord bearing and distance of South 3°08'50" West, 898.83 feet;

Thence South 36°25'36" West, 247.60 feet to a point of curvature;

Thence along a curve to the right 623.20 feet, said curve having a radius of 819.02 feet, a delta angle of 43°35'50", and a chord bearing and distance of South 58°15'53" West, 608.28 feet;

Thence leaving said centerline North 59°36'57" West, 81.12 feet to the northerly Right-of-Way of said Highway;

Thence continuing North 59°36'57" West, 396.95 feet;

Thence North 66°00'17" West, 636.93 feet;

Thence South 86°13'21" West, 314.20 feet;

Thence North 83°34'34" West, 1144.87 feet to the East line of Short Plat SS-2203, AFN 8709110024, records of Thurston County, Washington;

Thence tracing said Short Plat boundary North 1°29'22" East, 547.61 feet;

Thence North 88°30'38" West, 410.98 feet to the easterly Right-of-Way line of Old Pacific Highway;

Thence continuing North 88°30'38" West, 30.42 feet to the centerline of said Highway;

Thence along said centerline North 8°05'22" West, 173.99 feet to a point of curvature;

Thence along a curve to the left 561.85 feet, said curve having a radius of 1534.98 feet, a delta angle of 20°58'19", and a chord bearing a distance of North 18°34'59" West, 558.72 feet to the West line of the Northeast Quarter of the Southwest Quarter of said Section;

Thence along said West line North 1°39'26" East, 351.81 feet to the **POINT OF BEGINNING**.

**EXCEPTING THEREFROM:** Old Pacific Highway and Burlington Northern Railroad Rights-of-Way.

Tract 2:

Parcel "C" of Thurston County Boundary Line Adjustment No. 15-118253 TC, recorded under Auditor's File No. 4495088, being more particularly described as follows:

A portion of the South half of Section 19, Township 18 North, Range 1 East, Willamette Meridian, Washington, described as follows;

Commencing at the Southwest corner of said Section 19; thence South 88°40'06" East, 2668.42 feet along the South line of said Section to the South quarter corner; thence along the North-South center Section line North 1°20'25" East, 936.21 feet to the **POINT OF BEGINNING**;

Thence South 83°34'34" East, 479.66 feet;

Thence North 86°13'21" East, 304.72 feet;

Thence South 66°00'17" East, 618.75 feet;

Thence South 59°36'57" East, 394.56 feet to the centerline of Old Pacific Highway;

Thence along said Highway centerline the following five courses;

Along a curve to the right 162.31 feet, said curve having a radius of 819.02 feet, a delta angle of 11°21'17", and a chord bearing and distance of North 87°15'03" West, 162.04 feet;

Thence North 81°34'24" West, 654.30 feet to a point of curvature;

Thence along a curve to the left 295.80 feet, said curve having a radius of 955.37 feet, a delta angle of 17°44'23", and a chord bearing and distance of South 89°32'47" West, 294.62 feet;

Thence South 80°40'36" West, 584.10 feet to a point of curvature;

Thence along a curve to the right 706.22 feet, said curve having a radius of 990.00 feet, a delta angle of 40°52'19", and a chord bearing and distance of North 78°53'15" West, 691.34 feet;

Thence leaving said centerline North 1°29'22" East, 419.42 feet;

Thence South 83°34'34" East, 665.38 feet to the **POINT OF BEGINNING**.

**EXCEPTING THEREFROM:** Old Pacific Highway Right-of-Way.

Tract 3:

That portion of the East 1650 feet of the South half of the Southeast Quarter of Section 19, Township 18 North, Range 1 East, Willamette Meridian, in Thurston County, Washington, lying Southerly of Old Pacific Highway and Northerly of Northern Pacific Railroad Right-of-Way.

Tract 4:

That portion of the Southwest Quarter of the Southeast Quarter of Section 19, Township 18 North, Range 1 East, Willamette Meridian, in Thurston County, Washington, lying Southerly of Old Pacific Highway and West of that parcel of land described in Statutory Warranty Deed recorded under Auditor's File No. 9407150276, Thurston County records.

Tract 5:

That portion of the Southeast Quarter of the Southwest Quarter of Section 19, Township 18 North, Range 1 East, Willamette Meridian, in Thurston County, Washington, lying Southwesterly of Old Pacific Highway and Easterly of that parent parcel of land described in Quit Claim Deed recorded under Auditor's File No. 3312557, Thurston County records.

**EXCEPTING THEREFROM:** Saint Clair Cutoff (Hwy 510) and Burlington Northern Railroad Spur Line Rights-of-Way.

Potable Water Well and System Easement:

An access and maintenance easement over and across Parcels "A" and "C" of Thurston County Boundary Line Adjustment No. 15-118253 TC, recorded under Auditor's File No. 4495088, Thurston County records, for the purpose of maintaining the potable water well and system located on said Parcel "C" that provides water service to Lots 2 and 3 of Short Plat No. SS-2203 recorded in Volume 22, Page 367, Thurston County records, the easement area consists of the existing driveways from Old Pacific Highway, well site, and additional area as may be necessary for the maintenance of said water system, over and across Parcels "A" and "C" as shown on said Boundary Line Adjustment.

**EXHIBIT D**

**Form of Easement Agreement**

**AFTER RECORDING MAIL TO:**

Legal Department  
City of Olympia  
PO Box 1967  
Olympia, WA 98507-1967

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**EASEMENT AGREEMENT**

**Grantor:** Nisqually Indian Tribe, a federally recognized Indian Tribe

**Grantee:** City of Olympia, a Washington municipal corporation

**Legal Description of Burdened Property:** Parcel "A" and Parcel "C" of Thurston County Boundary Line Adjustment No. 15-118253 TC, recorded under Auditor's File No. 4495088.

Complete legal description is on Exhibit A attached to this document.

**Tax Parcel Nos.:** A portion of Tax Parcel Nos. 21819130101 and 21819430100

**Reference No.:** None

## EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the “**Agreement**”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **Nisqually Indian Tribe**, a federally recognized Indian Tribe (the “**Nisqually Tribe**”), Grantor, and the **City of Olympia**, a Washington municipal corporation (the “**City**”), Grantee; 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 Nisqually Tribe is the owner of that certain real property situate in Thurston County, Washington and legally described in attached **Exhibit A** which is incorporated herein by reference (the “**Burdened Property**”); and

B. WHEREAS, the Easement granted herein is located upon real property depicted in Boundary Line Adjustment (BLA) No. 15-118253 TC, recorded under Auditor’s Number 4495088; and

C. WHEREAS, the City and the Nisqually Tribe are parties to a Memorandum of Agreement dated as of May 14, 2008 (as amended and as it may hereafter be amended, the “**MOA**”), a copy of which is attached hereto and incorporated herein by reference as **Exhibit B**; and

D. WHEREAS, among other things, the MOA contemplates the City’s desire to work cooperatively with the Nisqually Tribe on shared issues of water conservation and availability, and the Nisqually Tribe’s similar desire to collaborate with the City; and

E. WHEREAS, the City and the Nisqually Tribe want to provide for an easement for the inspection, construction, repair, operation, preservation and protection, and maintenance of the City’s well, well house, pumps, water lines and fire hydrant for fire suppression and to provide water service for single family residential water supply for neighboring Tax Parcels 21819310201 and 21819310202; and

NOW, THEREFORE, in consideration of the recitals, grants and covenants contained herein, and which recitals are incorporated into this Agreement and made part hereof, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:



## A G R E E M E N T

1. **Grant of Facility Easement.** The Nisqually Tribe grants to the City a perpetual, exclusive easement (the “**Potable Water Well and System Easement**”) for the sole purpose of inspection, maintenance, construction, repair, replacement, preservation and protection, and operation of the water well, well house, well pumps, electrical or other power source related thereto, water lines emanating therefrom, as described in **Exhibit A** attached hereto, fire suppression water lines and the fire hydrant associated therewith, on, over, in, under and across that portion of the Burdened Property described in attached **Exhibit A** and upon real property depicted in Boundary Line Adjustment (BLA) No. 15-118253 TC, recorded under Auditor’s Number 4495088; (the “**Potable Water Well and System Easement Area**”). The Nisqually Tribe shall not install any above-ground improvements in the Facility Easement Area.

2. **Grant of Access Easement.** The Nisqually Tribe hereby grants to the City a non-exclusive easement for vehicular and pedestrian ingress and egress to the Facility Easement Area (“**Access Easement**”), as reasonably necessary for the inspection, maintenance, construction, repair, replacement, preservation and protection, and operation, of the water well-field, well pumps, electrical or other power source related thereto, water lines emanating therefrom, fire suppression water lines and the fire hydrant associated therewith on, over, in, under and across the Burdened Property.

The Nisqually Tribe acknowledges that the City uses the Existing Paved Road, as depicted in Boundary Line Adjustment (BLA) No. 15-118253 TC, recorded under Auditor’s Number 4495088, and the Parties shall reasonably coordinate their use of the Existing Paved Road so as to minimize interference with each other’s activities. The Nisqually Tribe shall not alter the Existing Paved Road or perform any construction in or around the Existing Paved Road that will interfere with the City’s easement rights granted herein without the express written consent of the City. The City is not required to maintain or improve the Existing Paved Road.

3. **Grant of Easement for Educational and Scientific Purposes.** The Nisqually Tribe hereby grants to the City a non-exclusive easement for vehicular and pedestrian ingress and egress to the Burdened Property, upon reasonable prior notice to the Nisqually Tribe, for education and scientific purposes. Said access shall be coordinated with the Grantor to avoid conflicts with events by the Nisqually Tribe.

4. **As-Is Grant.** The City accepts the Easements on an as-is basis, and acknowledges that the Nisqually Tribe has made no representations whatsoever as to the condition of the Easement Areas.

5. **Use of Easement Areas.** The City, at its sole cost and expense, shall be responsible for the inspection, maintenance, construction, repair, replacement, preservation and protection, and operation, of the Facility Easement Area. Without limiting the foregoing, the City shall be solely responsible for establishing and paying for any utility services required in connection with the Facility Easement Area. The City shall not permit waste,

damage or injury to the Easement Areas, 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 Facility and Easement Areas if any damage occurs in connection with the City's use of the Easement Areas or the inspection, maintenance, construction, repair, replacement, preservation and protection, and operation, of the Facility Easement Area. The owner of the Burdened Property may post notices in accordance with applicable laws. The City shall secure all appropriate governmental approvals and permits for any construction on the Easement Areas, and shall complete all work with due diligence and in a good and workmanlike manner.

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

7. **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 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 7**, the City agrees to use and occupy the Easement Areas 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.

8. **Insurance.** The City shall at all times, at its sole cost and expense, keep in full force and effect, through a municipal risk insurance pool, and/or 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 Areas or the Facility Easement Area, 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 Areas and the insured party's operations thereon, including the acts of its independent contractors. 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 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 Areas, the City shall provide a certificate of insurance (on an ACORD 27 form) or similar form, evidencing that the foregoing policies or participation in a municipal risk insurance pool are in full force and effect.

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

10. **Dispute Resolution.** In the event of a dispute between the Parties with respect to this Easement 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 MOA, attached hereto as **Exhibit B**. 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 United States 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.

11. **Waiver of Sovereign Immunity.** So that the City and Nisqually Tribe 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 United States 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 the City 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 the City 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 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 12 below.

(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.

12. **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:**

Chairperson  
Nisqually Indian Tribe  
4820 She-Nah-Num Dr SE  
Olympia, WA 98513

**To City of Olympia:**

City Manager  
City of Olympia  
601 4<sup>th</sup> Ave E  
PO Box 1967  
Olympia, WA 98507-1967

**With a required copy to:**

Office of the Tribal Attorney  
Nisqually Indian Tribe  
4820 She-Nah-Num Dr SE  
Olympia, WA 98513

**With a required copy to:**

City Attorney  
City of Olympia  
601 4<sup>th</sup> Ave E  
PO Box 1967  
Olympia, WA 98507-1967

13. **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 (**Exhibit B**, attached hereto and incorporated herein by reference) shall apply to this Agreement as if fully set forth herein.

14. **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 City, meaning that the City’s benefits and burdens under this Agreement are personal to the City and do not run to the successors and assigns of any property owned by the City. The City shall not transfer any rights or obligations under this Agreement (including without limitation the Easement), except that the City 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. 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.

15. **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 the Parties as the final expression of their agreement regarding the easements set forth herein.

16. **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.

17. **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.

[Signatures on following pages.]

DATED this \_\_\_\_ day of \_\_\_\_\_, 2017

**Grantor:**

NISQUALLY INDIAN TRIBE, a federally  
recognized Indian tribe

By: \_\_\_\_\_

Signature

Name [print]: \_\_\_\_\_

Its: Chairperson

**Grantee:**

CITY OF OLYMPIA, a Washington municipal  
corporation

By: \_\_\_\_\_

Signature

Name: [print] \_\_\_\_\_

Its: Mayor

By: \_\_\_\_\_

Signature

Name: [print] \_\_\_\_\_

Its: City Manager

Acknowledgements

STATE OF WASHINGTON )  
: ss.  
COUNTY OF THURSTON )

On the \_\_\_\_ day of \_\_\_\_\_ 2017, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Farron McCloud, to me known to be the Chairperson of the Nisqually Indian Tribe, a federally recognized Indian tribe, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath states that he is authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.

\_\_\_\_\_  
Signature  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON )  
: ss.  
COUNTY OF THURSTON )

On the \_\_\_\_ day of \_\_\_\_\_ 2017, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Cheryl Selby, to me known to be the Mayor of the City of Olympia, a municipal corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath states that she is authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.

\_\_\_\_\_  
Signature  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON )

: ss.

COUNTY OF THURSTON )

On the \_\_\_\_ day of \_\_\_\_\_ 2017, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Steven R. Hall, to me known to be the City Manager of the City of Olympia, a municipal corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath states that he is authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.

\_\_\_\_\_  
Signature

Print Name: \_\_\_\_\_

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_

My commission expires \_\_\_\_\_



## EXHIBIT A

### Legal Description of the Burdened Property

#### Tract 1:

Parcel "A" of Thurston County Boundary Line Adjustment No. 15-118253 TC, recorded under Auditor's File No. 4495088, being more particularly described as follows:

A portion of the South half of Section 19, Township 18 North, Range 1 East, Willamette Meridian, Washington, described as follows;

Commencing at the Southwest corner of said Section 19; thence North  $1^{\circ}58'24''$  East, 2657.49 feet along the West line of said Section to the West Quarter corner of said Section; thence along the east-west center Section line South  $88^{\circ}29'02''$  East, 1319.53 feet to the CW 1/16 corner, being the **POINT OF BEGINNING**;

Thence continuing along said line South  $88^{\circ}29'02''$  East, 3371.91 feet to the centerline of Old Pacific Highway;

Thence along said Highway centerline the following five courses;

Along a curve to the left 104.60 feet, said curve having a radius of 818.51 feet, a delta angle of  $7^{\circ}19'20''$ , and a chord bearing and distance of South  $26^{\circ}30'45''$  East, 104.53 feet;

Thence South  $30^{\circ}10'24''$  East, 718.60 feet to a point of curvature;

Thence along a curve to the right 951.43 feet, said curve having a radius of 819.02 feet, a delta angle of  $66^{\circ}33'31''$ , and a chord bearing and distance of South  $3^{\circ}08'50''$  West, 898.83 feet;

Thence South  $36^{\circ}25'36''$  West, 247.60 feet to a point of curvature;

Thence along a curve to the right 623.20 feet, said curve having a radius of 819.02 feet, a delta angle of  $43^{\circ}35'50''$ , and a chord bearing and distance of South  $58^{\circ}15'53''$  West, 608.28 feet;

Thence leaving said centerline North  $59^{\circ}36'57''$  West, 81.12 feet to the northerly Right-of-Way of said Highway;

Thence continuing North  $59^{\circ}36'57''$  West, 396.95 feet;

Thence North  $66^{\circ}00'17''$  West, 636.93 feet;

Thence South  $86^{\circ}13'21''$  West, 314.20 feet;

Thence North  $83^{\circ}34'34''$  West, 1144.87 feet to the East line of Short Plat SS-2203, AFN 8709110024, records of Thurston County, Washington;

Thence tracing said Short Plat boundary North  $1^{\circ}29'22''$  East, 547.61 feet;

Thence North  $88^{\circ}30'38''$  West, 410.98 feet to the easterly Right-of-Way line of Old Pacific Highway;

Thence continuing North  $88^{\circ}30'38''$  West, 30.42 feet to the centerline of said Highway;

Thence along said centerline North  $8^{\circ}05'22''$  West, 173.99 feet to a point of curvature;

Thence along a curve to the left 561.85 feet, said curve having a radius of 1534.98 feet, a delta angle of  $20^{\circ}58'19''$ , and a chord bearing a distance of North  $18^{\circ}34'59''$  West, 558.72 feet to the West line of the Northeast Quarter of the Southwest Quarter of said Section;

Thence along said West line North  $1^{\circ}39'26''$  East, 351.81 feet to the **POINT OF BEGINNING**.

**EXCEPTING THEREFROM:** Old Pacific Highway and Burlington Northern Railroad Rights-of-Way.

Tract 2:

Parcel "C" of Thurston County Boundary Line Adjustment No. 15-118253 TC, recorded under Auditor's File No. 4495088 , being more particularly described as follows:

A portion of the South half of Section 19, Township 18 North, Range 1 East, Willamette Meridian, Washington, described as follows;

Commencing at the Southwest corner of said Section 19; thence South 88°40'06" East, 2668.42 feet along the South line of said Section to the South quarter corner; thence along the North-South center Section line North 1°20'25" East, 936.21 feet to the **POINT OF BEGINNING**;

**BEGINNING**;

Thence South 83°34'34" East, 479.66 feet;

Thence North 86°13'21" East, 304.72 feet;

Thence South 66°00'17" East, 618.75 feet;

Thence South 59°36'57" East, 394.56 feet to the centerline of Old Pacific Highway;

Thence along said Highway centerline the following five courses;

Along a curve to the right 162.31 feet, said curve having a radius of 819.02 feet, a delta angle of 11°21'17", and a chord bearing and distance of North 87°15'03" West, 162.04 feet;

Thence North 81°34'24" West, 654.30 feet to a point of curvature;

Thence along a curve to the left 295.80 feet, said curve having a radius of 955.37 feet, a delta angle of 17°44'23", and a chord bearing and distance of South 89°32'47" West, 294.62 feet;

Thence South 80°40'36" West, 584.10 feet to a point of curvature;

Thence along a curve to the right 706.22 feet, said curve having a radius of 990.00 feet, a delta angle of 40°52'19", and a chord bearing and distance of North 78°53'15" West, 691.34 feet;

Thence leaving said centerline North 1°29'22" East, 419.42 feet;

Thence South 83°34'34" East, 665.38 feet to the **POINT OF BEGINNING**.

**EXCEPTING THEREFROM:** Old Pacific Highway Right-of-Way.

Potable Water Well and System Easement:

An access and maintenance easement over and across Parcels "A" and "C" of Thurston County Boundary Line Adjustment No. 15-118253 TC, recorded under Auditor's File No. 4495088, Thurston County records, for the purpose of maintaining the potable water well and system located on said Parcel "C" that provides water service to Lots 2 and 3 of Short Plat No. SS-2203 recorded in Volume 22, Page 36

## EXHIBIT B

### MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF OLYMPIA, WASHINGTON AND THE NISQUALLY INDIAN TRIBE

1 5 3 1 0

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

## EXHIBIT B

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

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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

## EXHIBIT B

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

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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 tenths 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

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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



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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

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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.

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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

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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

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(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

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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,

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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. The

## EXHIBIT B

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



## EXHIBIT B

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 B**

- 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)

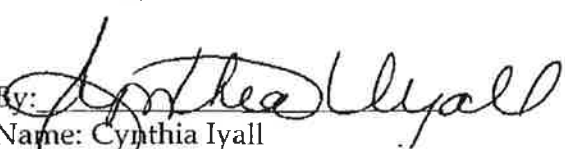
30. Termination. Either Party may terminate this Agreement if the Parties are unable to submit a final Mitigation Plan to Ecology as required in Paragraph 3(e).

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

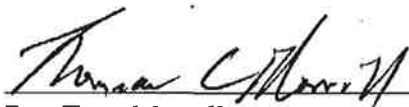
**THE CITY OF OLYMPIA**

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


**THE NISQUALLY TRIBE**

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

**Approved as to form**

  
By: Tom Morrill  
Title: City Attorney

**Approved as to form**

  
By: Thor A. Hoyte  
Title: Tribal Attorney

**EXHIBIT B**

Acknowledgements

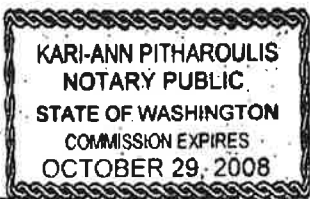
STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF THURSTON )

This instrument was acknowledged before me on the 14<sup>th</sup> day of May, 2008 by DOUG MAH, as the MAYOR of THE CITY OF OLYMPIA.

Dated: May 14, 2008

Kari-Ann Pitharoulis

NOTARY PUBLIC in and for the State of  
Washington, residing at Olympia  
My appointment expires 10-29-08  
Print Name Kari-Ann Pitharoulis



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF THURSTON )

This instrument was acknowledged before me on the 14<sup>th</sup> day of May, 2008, by CYNTHIA IYALL, as the CHAIRMAN of the NISQUALLY TRIBE.

Dated: May 14, 2008

Kari-Ann Pitharoulis

NOTARY PUBLIC in and for the State of  
Washington, residing at Olympia  
My appointment expires 10-29-08  
Print Name Kari-Ann Pitharoulis

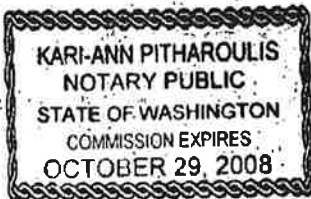




EXHIBIT A  
**EXHIBIT Nisqually Indian Tribe**  
**4820 She-Nah-Num Drive S.E.**  
**Olympia, Washington 98513**  
**Phone: (360) 456-5221**

**NISQUALLY TRIBAL COUNCIL**  
**RESOLUTION NO. 11-2008**

**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 5 FOR, 0 AGAINST, and 0 ABSTAIN.

**ATTEST**

  
Cynthia Iyall, Chairperson  
NISQUALLY INDIAN TRIBE

  
Norine L. Wells, Secretary  
NISQUALLY INDIAN TRIBE

**RESOLUTION NO. M-1702**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA,  
WASHINGTON, AUTHORIZING THE EXECUTION OF A  
MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF OLYMPIA  
AND THE NISQUALLY INDIAN TRIBE FOR JOINT DEVELOPMENT  
AND OPERATION OF THE McALLISTER WELLFIELD AND THE  
CREATION OF A STEWARDSHIP COALITION TO BENEFIT WATER  
SOURCES IN THE REGION**

**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 13<sup>th</sup> day of May 2008.

  
\_\_\_\_\_  
MAYOR

ATTEST:

  
\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY

## EXHIBIT B

### Exhibit C to Memorandum of Agreement

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#### 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(b)(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.

## EXHIBIT B

### Exhibit C to Memorandum of Agreement

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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 B

### Exhibit C to Memorandum of Agreement

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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 such 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

## EXHIBIT B

### Exhibit C to Memorandum of Agreement

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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 B**

**Exhibit C to Memorandum of Agreement**

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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 B**

**Exhibit C to Memorandum of Agreement**

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Acknowledgements

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\_\_.

(seal or stamp)

\_\_\_\_\_  
[Signature of Notary]

\_\_\_\_\_  
[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\_\_.

(seal or stamp)

\_\_\_\_\_  
[Signature of Notary]

\_\_\_\_\_  
[Print Name of Notary]

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

**EXHIBIT B**

**Exhibit C to Memorandum of Agreement**

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**EXHIBIT A**

**MOA**

**EXHIBIT B**

**Exhibit C to Memorandum of Agreement**

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**EXHIBIT B**

**WATER RIGHTS CERTIFICATE**

# EXHIBIT B

## Exhibit D to Memorandum of Agreement

Page 1

### RETURN ADDRESS:

City of Olympia  
City Clerk's Office  
PO Box 1967  
Olympia, WA 98507

### WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)

<b>DOCUMENT TITLE(S)</b> (or transactions contained therein):  Quitclaim Deed
<b>REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:</b>  <input type="checkbox"/> Additional reference #s on page _____ of document(s)
<b>GRANTOR(S)</b> (Last name first, then first name and initials)  CITY OF OLYMPIA, a non-charter, optional municipal code city of the State of Washington
<input type="checkbox"/> Additional names on page _____ of document
<b>GRANTEE(S)</b> (Last name first, then first name and initials)  NISQUALLY INDIAN TRIBE, a federally recognized Indian tribe
<input type="checkbox"/> Additional names on page _____ of document
<b>LEGAL DESCRIPTION</b> (abbreviated: i.e., lot, block, plat or section, township, range) [To be inserted; description of Easement Area]  <input checked="" type="checkbox"/> Additional legal is on Exhibit A of document
<b>ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER</b>  [To be inserted]
<input type="checkbox"/> Assessor Tax # not yet assigned

## EXHIBIT B

### Exhibit D to Memorandum of Agreement

Page 2

#### 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.

PAGE 2 OF 10



**EXHIBIT B**

**Exhibit D to Memorandum of Agreement**

Page 3

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 B**

**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 B**

**Exhibit D to Memorandum of Agreement**  
Page 5

**EXHIBIT A TO QUITCLAIM DEED**

**Legal Description of Water Rights**

**EXHIBIT B**

**Exhibit D to Memorandum of Agreement**

Page 6

**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 B**

**Exhibit D to Memorandum of Agreement**

Page 7

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT B**

**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: \_\_\_\_\_

**EXHIBIT B**

**Exhibit D to Memorandum of Agreement**  
Page 9

**EXHIBIT A TO NOTICE OF REVERSION**

**Legal Description of Property**

**EXHIBIT B**

**Exhibit D to Memorandum of Agreement**  
Page 10

**EXHIBIT B TO QUITCLAIM DEED**

**Memorandum of Agreement**



## **EXHIBIT B**

### **Exhibit E to Memorandum of Agreement**

Page 1

**Filed for Record by and  
After Recording Return to:**

City of Olympia  
City Clerk's Office  
PO Box 1967  
Olympia, WA 98507

### **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

## EXHIBIT B

### 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

## EXHIBIT B

### Exhibit E to Memorandum of Agreement

Page 3

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

## EXHIBIT B

### Exhibit E to Memorandum of Agreement

Page 4

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 a 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

## EXHIBIT B

### Exhibit E to Memorandum of Agreement

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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.

## EXHIBIT B

### Exhibit E to Memorandum of Agreement

Page 6

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 B**

**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: \_\_\_\_\_

**EXHIBIT B**

**Exhibit E to Memorandum of Agreement**

Page 8

Acknowledgements

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 B**

**Exhibit E to Memorandum of Agreement**

Page 9

**EXHIBIT A**

**Legal Description of the Burdened Property**

**EXHIBIT B**

**Exhibit E to Memorandum of Agreement**

Page 10

**EXHIBIT B**

**MOA**

**[Attached hereto]**

**EXHIBIT B**

**Exhibit E to Memorandum of Agreement**

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**EXHIBIT C**

**Legal Description of the Easement**

**EXHIBIT B**

**Exhibit G**

Final Decisions Regarding Wellfield Water Rights  
[to be attached]