



Meeting Agenda

City Council

City Hall
601 4th Avenue E
Olympia, WA 98501

Information: 360.753.8244

Tuesday, January 24, 2017

7:00 PM

Room 207

1. ROLL CALL

1.A ANNOUNCEMENTS

1.B APPROVAL OF AGENDA

2. SPECIAL RECOGNITION

- 2.A** [17-0072](#) Special Recognition: The Retirement of K9 Officer Melnic

3. PUBLIC COMMUNICATION

(Estimated Time: 0-30 Minutes) (Sign-up Sheets are provided in the Foyer.)

During this portion of the meeting, citizens may address the City Council regarding items related to City business, including items on the Agenda. In order for the City Council to maintain impartiality and the appearance of fairness in upcoming matters and to comply with Public Disclosure Law for political campaigns, speakers will not be permitted to make public comments before the Council in these three areas: (1) on agenda items for which the City Council either held a Public Hearing in the last 45 days, or will hold a Public Hearing within 45 days, or (2) where the public testimony may implicate a matter on which the City Council will be required to act in a quasi-judicial capacity, or (3) where the speaker promotes or opposes a candidate for public office or a ballot measure.

Individual comments are limited to three (3) minutes or less. In order to hear as many people as possible during the 30-minutes set aside for Public Communication, the City Council will refrain from commenting on individual remarks until all public comment has been taken. The City Council will allow for additional public comment to be taken at the end of the meeting for those who signed up at the beginning of the meeting and did not get an opportunity to speak during the allotted 30-minutes.

COUNCIL RESPONSE TO PUBLIC COMMUNICATION (Optional)

4. CONSENT CALENDAR

(Items of a Routine Nature)

- 4.A** [17-0081](#) Approval of January 9, 2017 City Council Special Meeting with District 22 Legislators Meeting Minutes

Attachments: [Minutes](#)

- 4.B** [17-0083](#) Approval of January 10, 2017 Study Session Meeting Minutes

Attachments: [Minutes](#)

- 4.C** [17-0082](#) Approval of January 10, 2017 City Council Meeting Minutes

Attachments: [Minutes](#)

4.D [17-0080](#) Bills and Payroll Certification

Attachments: [Bills and Payroll Certification](#)

4.E [17-0079](#) Selection of Mayor Pro Tem

4.F [17-0003](#) Approval of Bid Award for Fones Road Booster Pump Station

Attachments: [Summary of Bids](#)

[Project Map](#)

4.G [17-0019](#) Approval of Resolution Setting a Public Hearing Date to Consider a Vacation Petition for a Portion of an Alley Right-of-Way Adjacent to 1919 Harrison Ave NW

Attachments: [Resolution](#)

[Petition](#)

[Petition Site Plan](#)

[Vicinity Map](#)

4.H [17-0049](#) Approval of Interlocal Agreement with City of Tumwater for Fire Training

Attachments: [Agreement](#)

4.I [17-0078](#) Approval of Ordinance on Corrected Second Reading Approving a Street Vacation Petition for a Portion of Hillside Drive SE

Attachments: [Ordinance](#)

4. SECOND READINGS

4. FIRST READINGS

5. PUBLIC HEARING

5.A [17-0088](#) Public Hearing on Potential Transfer of the McAllister Springs Properties to the Nisqually Indian Tribe

Attachments: [Resolution](#)

[Real Estate Transfer Agreement](#)

[Statutory Warranty Deed](#)

[Easement Agreement](#)

[Map](#)

6. OTHER BUSINESS

6.A [17-0068](#) Approval of a Resolution to Adopt the First Amendment of Memorandum of Agreement between the City of Olympia and the Nisqually Indian

Tribe

Attachments: [Resolution](#)
[First Amendment to MOA](#)
[Map](#)

7. CONTINUED PUBLIC COMMUNICATION

(If needed for those who signed up earlier and did not get an opportunity to speak during the allotted 30 minutes)

8. REPORTS AND REFERRALS

8.A COUNCIL INTERGOVERNMENTAL/COMMITTEE REPORTS AND REFERRALS

8.B CITY MANAGER'S REPORT AND REFERRALS

9. ADJOURNMENT

The City of Olympia is committed to the non-discriminatory treatment of all persons in employment and the delivery of services and resources. If you require accommodation for your attendance at the City Council meeting, please contact the Council's Executive Assistant at 360.753.8244 at least 48 hours in advance of the meeting. For hearing impaired, please contact us by dialing the Washington State Relay Service at 7-1-1 or 1.800.833.6384.



City Council

Special Recognition: The Retirement of K9 Officer Melnic

Agenda Date: 1/24/2017
Agenda Item Number: 2.A
File Number: 17-0072

Type: recognition **Version:** 1 **Status:** Recognition

Title

Special Recognition: The Retirement of K9 Officer Melnic

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Recognize K9 Officer Melnic for his service to the community upon his retirement from the Olympia Police Department.

Report

Issue:

Whether to recognize Melnic, who has been an integral part of the Olympia Police Department (OPD) for four years. He is retiring to enjoy his life at home.

Staff Contact:

Lt. Paul Lower, Police Department, 360.753.8410

Presenter(s):

Lt. Paul Lower

Councilmember Jessica Bateman, on behalf of the Joint Animal Services Board

Background and Analysis:

Melnic is beloved by both the Olympia Police Department and the Olympia Community. He has been the unofficial mascot of OPD and has visited with countless Olympia citizens. OPD is sending him into retirement with special recognition from the City Council and with a party at Hands On Children's Museum, on Friday, January 27, 2017 at 6:30pm. All are invited to the party with free admission to the Museum!

Financial Impact:

N/A

Type: recognition **Version:** 1 **Status:** Recognition

Attachments:

None



City Hall
601 4th Avenue E.
Olympia, WA 98501
360-753-8244

City Council

Approval of January 9, 2017 City Council Special Meeting with District 22 Legislators Meeting Minutes

Agenda Date: 1/24/2017
Agenda Item Number: 4.A
File Number: 17-0081

Type: minutes **Version:** 1 **Status:** Consent Calendar

Title

Approval of January 9, 2017 City Council Special Meeting with District 22 Legislators Meeting Minutes



Meeting Minutes - Draft

City Council

City Hall
601 4th Avenue E
Olympia, WA 98501

Information: 360.753.8244

Monday, January 9, 2017

8:00 AM

Oly Rockfish Grill 700 4th Ave E

Joint Meeting with District 22 Legislators

1. ROLL CALL

Present: 6 - Mayor Cheryl Selby, Mayor Pro Tem Nathaniel Jones, Councilmember Jessica Bateman, Councilmember Jim Cooper, Councilmember Clark Gilman and Councilmember Julie Hankins

Excused: 1 - Councilmember Jeannine Roe

2. BUSINESS ITEMS

2.A [17-0037](#) Meeting with State Legislators

Mayor Selby opened the meeting and thanked the 22nd District legislators for taking time out of their busy schedules to meet with the Council. She outlined the City's 2017 Legislative agenda which supports solutions to critical issues in partnership for residents of the Capital City and beyond.

The City's top legislative priorities are:

- State resources and support to address homelessness, affordable housing, mental health and chemical dependency services.

- Funding for new US 101 Interchange ramps in West Olympia.

- Funding and policy guidance for research and future projects to address Sea Level Rise.

- Funding to accomplish the work of the Capital Lake/Deschutes EIS Process.

Public Works Director Rich Hoey discussed the US 101 interchange ramps in West Olympia and the concerns regarding congestion. The City seeks State support, advocacy and funding to help cover the costs of the project. To move forward, we are exploring a variety of funding sources, including developer impact fees and federal and state grants.

Legislators asked clarifying questions and the group discussed issues .

The discussion was completed.

3. ADJOURNMENT

The meeting adjourned at 9:15a.m.



City Hall
601 4th Avenue E.
Olympia, WA 98501
360-753-8244

City Council

Approval of January 10, 2017 Study Session Meeting Minutes

Agenda Date: 1/24/2017
Agenda Item Number: 4.B
File Number: 17-0083

Type: minutes **Version:** 1 **Status:** Consent Calendar

Title

Approval of January 10, 2017 Study Session Meeting Minutes



Meeting Minutes - Draft

City Council

City Hall
601 4th Avenue E
Olympia, WA 98501

Information: 360.753.8244

Tuesday, January 10, 2017

5:30 PM

Room 207

Study Session

1. ROLL CALL

Present: 6 - Mayor Pro Tem Nathaniel Jones, Councilmember Jessica Bateman, Councilmember Jim Cooper, Councilmember Clark Gilman, Councilmember Julie Hankins and Councilmember Jeannine Roe

Excused: 1 - Mayor Cheryl Selby

2. BUSINESS ITEMS

2.A [17-0012](#) Debrief Thurston Community Economic Alliance Strategic Plan

Economic Development Director Renee Sunde gave background and context of the City's relationship with the Thurston Economic Council (EDC). The EDC provides data and research, business retention and recruitment support, entrepreneurial support; regional events and more.

Ms. Sunde discussed the Thurston Community Economic Alliance (TCEA) Strategic Plan, which is the first countywide strategic plan for economic development and provides a path to work together regionally.

Ms. Sunde introduced EDC Director Michael Cade and Marketing Director Annette Roth.

Mr. Cade discussed the vision, purpose and timing of the TCEA. The TCEA provides a coordinated plan for economic development; identifies goals to attract investment; creates an economic development partnership; leverages municipal relationships and provides a long term strategy to support the regional economy.

Mr. Cade reviewed the five focus areas within the TCEA Strategic Plan. The focus areas include career pathways and workforce readiness; traded sector industry growth and innovation; small business and entrepreneurial resources; infrastructure, policy and funding coordination; and brand development, partnerships and communication.

Mr. Cade summarized the plan as follows:

- Coordinated, regional strategy to achieve economic vibrancy in Thurston County.
- It sets the framework for a partnership work plan.

- It sets guiding principles of effort and priorities.
- It is built upon the input gleaned from 175 separate interviews.
- It allows for predictability in resources.
- It creates a framework for a coordinated work effort between the municipalities, Port, County, and EDC.
- It is built upon 5 core central themes - each with an identified work plan.

Councilmembers asked clarifying questions.

The report was received.

3. ADJOURNMENT

The meeting adjourned at 6:30p.m.



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601 4th Avenue E.
Olympia, WA 98501
360-753-8244

City Council

Approval of January 10, 2017 City Council Meeting Minutes

Agenda Date: 1/24/2017
Agenda Item Number: 4.C
File Number: 17-0082

Type: minutes **Version:** 1 **Status:** Consent Calendar

Title

Approval of January 10, 2017 City Council Meeting Minutes



Meeting Minutes - Draft

City Council

City Hall
601 4th Avenue E
Olympia, WA 98501

Information: 360.753.8244

Tuesday, January 10, 2017

7:00 PM

Room 207

1. ROLL CALL

Present: 6 - Mayor Pro Tem Nathaniel Jones, Councilmember Jessica Bateman, Councilmember Jim Cooper, Councilmember Clark Gilman, Councilmember Julie Hankins and Councilmember Jeannine Roe

Excused: 1 - Mayor Cheryl Selby

1.A ANNOUNCEMENTS

Mayor Pro Tem Jones announced the Council met in Study Session earlier in the evening. He noted the January 17 City Council meeting has been cancelled. Mayor Pro Tem Jones also announced the Council will have their retreat on January 13 and 14 at the LOTT Board Room, located at 500 Adams Street. He also mentioned the Council met with the 22nd legislative delegation on January 9 to discuss Legislative priorities.

1.B APPROVAL OF AGENDA

The agenda was approved.

2. SPECIAL RECOGNITION - None

3. PUBLIC COMMUNICATION

The following people spoke: Franz Kilmerschultz, Mindy Atkinson, Boudicca Walsh, Karma Reynoldson, Renatta Rollins, CC Coates and Jim Reeves.

COUNCIL RESPONSE TO PUBLIC COMMUNICATION (Optional)

4. CONSENT CALENDAR

Councilmember Cooper asked to identify a place in the agenda where we can have an "other" agenda item for Councilmembers to discuss any topics for the upcoming year. And would like a Council Committee roles and responsibilities discussion and a history of the evolution of Committees.

Councilmembers Gilman and Roe asked for a summary of bathroom issues.

4.A [17-0035](#) Approval of January 3, 2017 City Council Meeting Minutes

Councilmembers Gilman and Roe asked for expanded notes, or a one sheet, summarizing decisions regarding restrooms issues.

The minutes were adopted.

4.B [17-0036](#) Approval of Draft City Council Retreat Agenda

Councilmember Cooper requested adding an "other" section for Councilmembers to bring up topics that they want to discuss but are not on the agenda.

The agenda was approved as amended.

4. SECOND READINGS

4.C [16-1119](#) Approval of Ordinance approving a Street Vacation Petition for a Portion of Hillside Drive SE

The ordinance was adopted on second reading.

4.D [16-1271](#) Quasi-Judicial Decision on Ordinance on Cushing Street Rezone

The ordinance was adopted on second reading.

Approval of the Consent Agenda

Mayor Pro Tem Jones moved, seconded by Councilmember Hankins, to adopt the Consent Calendar. The motion carried by the following vote:

Aye: 6 - Mayor Pro Tem Jones, Councilmember Bateman, Councilmember Cooper, Councilmember Gilman, Councilmember Hankins and Councilmember Roe

Excused: 1 - Mayor Selby

4. FIRST READINGS - None

5. PUBLIC HEARING - None

6. OTHER BUSINESS

6.A [17-0017](#) Approval of a Resolution Declaring Select McAllister Springs Properties as Surplus

Public Works Director Rich Hoey gave a brief history of McAllister Springs. The City transitioned from McAllister Springs to McAllister Wellfield in early 2015. Mr. Hoey noted the City transitioned off the Springs because the Safe Drinking Water Act required costly additional treatment to the Springs, the risk of hazardous spill from the adjacent rail line and sea level rise. He discussed the partnership and agreement between the City and the Nisqually Tribe in relation to the Wellfield and the Springs.

Mr. Hoey reviewed the reasons to declare parcels A, C, D and E at the Springs as surplus. The reasons are: McAllister Springs is no longer used (or able to be used) as a water supply; it is costly utility ratepayers to maintain the facilities and grounds; there is no other need for other than potential for environmental purposes.

Mr. Hoey noted the Nisqually Tribe is willing to take over ownership of the property including all maintenance and liabilities.

Councilmembers asked clarifying questions.

The resolution was approved.

7. CONTINUED PUBLIC COMMUNICATION

8. REPORTS AND REFERRALS

8.A COUNCIL INTERGOVERNMENTAL/COMMITTEE REPORTS AND REFERRALS

Councilmembers reported on meetings and events attended.

8.B CITY MANAGER'S REPORT AND REFERRALS

City Manager Steve Hall reminded the Council of the retreat occurring on January 13 and 14. He also noted as part of the hiring process for the new Administrative Services Director, there will be a meet and greet with finalists in City Council Chambers on January 19. In light of several fires in the City recently, Mr. Hall reminded citizens to be safe with heating sources during the cold weather.

9. ADJOURNMENT

The meeting adjourned at 8:20p.m.



City Hall
601 4th Avenue E.
Olympia, WA 98501
360-753-8244

City Council

Bills and Payroll Certification

Agenda Date: 1/24/2017
Agenda Item Number: 4.D
File Number: 17-0080

Type: decision **Version:** 1 **Status:** Consent Calendar

Title
Bills and Payroll Certification

CITY OF OLYMPIA
EXPENDITURE SUMMARY

"I THE UNDERSIGNED, DO HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE MATERIALS HAVE BEEN FURNISHED, THE SERVICES RENDERED OR THE LABOR PERFORMED AS DESCRIBED HEREIN, THAT ANY ADVANCE PAYMENT IS DUE AND PAYABLE PURSUANT TO A CONTRACT OR IS AVAILABLE AS AN OPTION FOR FULL OR PARTIAL FULFILLMENT OF A CONTRACTUAL OBLIGATION, AND THAT THE CLAIMS ARE JUST, DUE AND UNPAID OBLIGATIONS AGAINST THE CITY OF OLYMPIA, AND THAT I AM AUTHORIZED TO AUTHENTICATE AND CERTIFY TO SAID CLAIMS". AND,

"I, THE UNDERSIGNED, DO HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT CLAIMS FOR EMPLOYEE AND OFFICER EXPENSES ARE JUST, DUE AND UNPAID OBLIGATIONS AGAINST THE CITY OF OLYMPIA, AND THAT I AM AUTHORIZED TO CERTIFY SAID CLAIMS".

FOR PERIOD	<u>1/1/2017</u>		<u>1/7/2017</u>
FOR A/P CHECK NUMBERS	<u>3682489</u>	THROUGH	<u>3682773</u>
FOR ELECTRONIC PAYMENTS	<u></u>	THROUGH	<u></u>

INCLUSIVE IN THE AMOUNT TOTALING

DATED

ADMINISTRATIVE SERVICES DIRECTOR

January 10, 2017



TOTAL APPROVED FOR PAYMENT

	FUND	
\$940,101.28	001	GENERAL FUND
\$0.00	002	SHOP FACILITIES
\$11,902.99	003	REVOLVING ACCOUNT FUND
\$0.00	004	URBAN ARTERIAL FUND
\$37,481.99	006	
\$352.38	007	
\$26,516.67	025	WASHINGTON CENTER
\$4,500.00	026	MUNICIPAL ARTS FUND
\$0.00	029	EQUIP & FACIL REPLACE RES
\$0.00	107	HUD
\$0.00	108	HUD
\$0.00	127	IMPACT FEES
\$0.00	130	SEPA MITIGATION FUND
\$0.00	132	LODGING TAX FUND
\$0.00	133	ARTS AND CONFERENCE FUND
\$0.00	134	PARKS AND REC SIDEWALK UT TAX
\$0.00	135	PARKING BUSINESS IMP AREA
\$0.00	136	FARMERS MRKT REPAIR/REPLC
\$0.00	137	CHILDREN'S HANDS ON MUSEUM
\$60.00	138	TRANS BENEFIT DISTRICT
\$0.00	208	LID OBLIGATION CONTROL
\$0.00	216	4th/5th AVE PW TRST
\$0.00	223	LTGO BOND FUND '06-PARKS
\$0.00	224	UTGO BOND FUND 2009 FIRE
\$0.00	225	CITY HALL DEBT FUND
\$0.00	226	2010 LTGO BOND-STREETPROJ
\$0.00	227	LOCAL DEBT FUND
\$0.00	228	2010B LTGO BONDS-HOCM
\$95,720.13	317	CIP
\$0.00	322	4/5th AVE CORRIDOR/BRIDGE
\$0.00	323	CIP CONSTR FUND - PARKS
\$0.00	324	FIRE STATION 4 CONSTRUCT
\$0.00	325	CITY HALL CONST
\$0.00	326	TRANSPORTATION CONST
\$0.00	329	GO BOND PROJECT FUND
\$0.00	331	FIRE EQUIPMENT REPLACEMENT FUND
\$50,166.67	401	WATER
\$1,035,643.45	402	SEWER
\$995.68	403	SOLID WASTE
\$763.88	404	STORM AND SURFACE WATER
\$0.00	434	STORM AND SURFACE WATER CIP
\$0.00	461	WATER CIP FUND
\$0.00	462	SEWER CIP FUND
\$59,735.22	501	EQUIPMENT RENTAL
\$0.00	502	C. R. EQUIPMENT RENTAL
\$0.00	503	UNEMPLOYMENT COMPENSATION
\$0.00	504	INS TRUST FUND
\$1,375.00	505	WORKERS COMPENSATION
\$0.00	604	FIREMEN'S PENSION FUND
\$0.00	605	CUSTOMERS WATER RESERVE
\$0.00	614	
\$0.00	621	WASHINGTON CENTER ENDOW
\$0.00	631	PUBLIC FACILITIES
\$0.00	682	LAW ENFORCEMENT RECORD MGNTSYS
\$0.00	701	PARKS-NEIGHBORHOOD
\$0.00	702	PARKS-COMMUNITY
\$0.00	703	PARKS-OPEN SPACE
\$0.00	707	PARKS-SPECIAL USE
\$0.00	711	TRANSPORTATION
\$0.00	720	SCHOOLS

\$2,265,315.32 GRAND TOTAL FOR WEEK

CITY OF OLYMPIA
EXPENDITURE SUMMARY

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FOR PERIOD 1/8/2017 1/14/2017
 FOR A/P CHECK NUMBERS 3682774 THROUGH 3683003
 FOR ELECTRONIC PAYMENTS _____ THROUGH _____

INCLUSIVE IN THE AMOUNT TOTALING

DATED

ADMINISTRATIVE SERVICES DIRECTOR

January 17, 2016 Jane Kukemo

TOTAL APPROVED FOR PAYMENT

FUND		
\$229,915.80	001	GENERAL FUND
\$0.00	002	SHOP FACILITIES
\$8,255.34	003	REVOLVING ACCOUNT FUND
\$0.00	004	URBAN ARTERIAL FUND
\$0.00	006	
\$4,980.91	007	
\$80.30	025	WASHINGTON CENTER
\$90.18	026	MUNICIPAL ARTS FUND
\$447,663.69	029	EQUIP & FACIL REPLACE RES
\$0.00	107	HUD
\$0.00	108	HUD
\$0.00	127	IMPACT FEES
\$0.00	130	SEPA MITIGATION FUND
\$0.00	132	LODGING TAX FUND
\$0.00	133	ARTS AND CONFERENCE FUND
\$1,329.78	134	PARKS AND REC SIDEWALK UT TAX
\$300.00	135	PARKING BUSINESS IMP AREA
\$0.00	136	FARMERS MRKT REPAIR/REPLC
\$8,473.00	137	CHILDREN'S HANDS ON MUSEUM
\$2,500.00	138	TRANS BENEFIT DISTRICT
\$0.00	208	LID OBLIGATION CONTROL
\$0.00	216	4th/5th AVE PW TRST
\$0.00	223	LTGO BOND FUND '06-PARKS
\$0.00	224	UTGO BOND FUND 2009 FIRE
\$0.00	225	CITY HALL DEBT FUND
\$0.00	226	2010 LTGO BOND-STREETPROJ
\$0.00	227	LOCAL DEBT FUND
\$0.00	228	2010B LTGO BONDS-HOCM
\$34,335.54	317	CIP
\$0.00	322	4/5th AVE CORRIDOR/BRIDGE
\$0.00	323	CIP CONSTR FUND - PARKS
\$0.00	324	FIRE STATION 4 CONSTRUCT
\$0.00	325	CITY HALL CONST
\$0.00	326	TRANSPORTATION CONST
\$0.00	329	GO BOND PROJECT FUND
\$0.00	331	FIRE EQUIPMENT REPLACEMENT FUND
\$18,445.02	401	WATER
\$9,870.53	402	SEWER
\$4,570.67	403	SOLID WASTE
\$9,796.83	404	STORM AND SURFACE WATER
\$12,459.68	434	STORM AND SURFACE WATER CIP
\$766.35	461	WATER CIP FUND
\$748.00	462	SEWER CIP FUND
\$1,753.28	501	EQUIPMENT RENTAL
\$0.00	502	C. R. EQUIPMENT RENTAL
\$0.00	503	UNEMPLOYMENT COMPENSATION
\$1,697,610.00	504	INS TRUST FUND
\$195.00	505	WORKERS COMPENSATION
\$0.00	604	FIREMEN'S PENSION FUND
\$0.00	605	CUSTOMERS WATER RESERVE
\$0.00	614	
\$0.00	621	WASHINGTON CENTER ENDOW
\$0.00	631	PUBLIC FACILITIES
\$0.00	682	LAW ENFORCEMENT RECORD MGNYS
\$0.00	701	PARKS-NEIGHBORHOOD
\$0.00	702	PARKS-COMMUNITY
\$0.00	703	PARKS-OPEN SPACE
\$0.00	707	PARKS-SPECIAL USE
\$0.00	711	TRANSPORTATION
\$0.00	720	SCHOOLS

\$2,494,139.90 GRAND TOTAL FOR WEEK

CITY OF OLYMPIA
EXPENDITURE SUMMARY

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FOR PERIOD 11/27/2016 12/3/2016
 FOR A/P CHECK NUMBERS 3681192 THROUGH 3681400
 FOR ELECTRONIC PAYMENTS _____ THROUGH _____

INCLUSIVE IN THE AMOUNT TOTALING

DATED
December 6, 2016

ADMINISTRATIVE SERVICES DIRECTOR
Jane Kurkemo

TOTAL APPROVED FOR PAYMENT
FUND

\$659,940.41	001	GENERAL FUND
\$0.00	002	SHOP FACILITIES
\$26,933.69	003	REVOLVING ACCOUNT FUND
\$0.00	004	URBAN ARTERIAL FUND
\$0.00	006	
\$1,002.76	007	
\$0.00	025	WASHINGTON CENTER
\$0.00	026	MUNICIPAL ARTS FUND
\$12,752.34	029	EQUIP & FACIL REPLACE RES
\$0.00	107	HUD
\$0.00	108	HUD
\$0.00	127	IMPACT FEES
\$0.00	130	SEPA MITIGATION FUND
\$8,333.33	132	LODGING TAX FUND
\$0.00	133	ARTS AND CONFERENCE FUND
\$58.41	134	PARKS AND REC SIDEWALK UT TAX
\$108.00	135	PARKING BUSINESS IMP AREA
\$1,795.20	136	FARMERS MRKT REPAIR/REPLC
\$0.00	137	CHILDREN'S HANDS ON MUSEUM
\$0.00	138	TRANS BENEFIT DISTRICT
\$0.00	208	LID OBLIGATION CONTROL
\$0.00	216	4th/5th AVE PW TRST
\$0.00	223	LTGO BOND FUND '06-PARKS
\$0.00	224	UTGO BOND FUND 2009 FIRE
\$0.00	225	CITY HALL DEBT FUND
\$0.00	226	2010 LTGO BOND-STREETPROJ
\$0.00	227	LOCAL DEBT FUND
\$0.00	228	2010B LTGO BONDS-HOCM
\$21,735.47	317	CIP
\$0.00	322	4/5th AVE CORRIDOR/BRIDGE
\$0.00	323	CIP CONSTR FUND - PARKS
\$0.00	324	FIRE STATION 4 CONSTRUCT
\$0.00	325	CITY HALL CONST
\$0.00	326	TRANSPORTATION CONST
\$0.00	329	GO BOND PROJECT FUND
\$0.00	331	FIRE EQUIPMENT REPLACEMENT FUND
\$12,310.65	401	WATER
\$3,467.69	402	SEWER
\$1,408.82	403	SOLID WASTE
\$4,034.70	404	STORM AND SURFACE WATER
\$0.00	434	STORM AND SURFACE WATER CIP
\$21,265.26	461	WATER CIP FUND
\$25,226.40	462	SEWER CIP FUND
\$1,724.34	501	EQUIPMENT RENTAL
\$20,572.27	502	C. R. EQUIPMENT RENTAL
\$250.00	503	UNEMPLOYMENT COMPENSATION
\$0.00	504	INS TRUST FUND
\$8,726.02	505	WORKERS COMPENSATION
\$0.00	604	FIREMEN'S PENSION FUND
\$0.00	605	CUSTOMERS WATER RESERVE
\$15,839.42	614	
\$0.00	621	WASHINGTON CENTER ENDOW
\$0.00	631	PUBLIC FACILITIES
\$0.00	682	LAW ENFORCEMENT RECORD MGNTSYS
\$0.00	701	PARKS-NEIGHBORHOOD
\$0.00	702	PARKS-COMMUNITY
\$0.00	703	PARKS-OPEN SPACE
\$0.00	707	PARKS-SPECIAL USE
\$0.00	711	TRANSPORTATION
\$0.00	720	SCHOOLS

\$847,485.18 GRAND TOTAL FOR WEEK

CITY OF OLYMPIA
EXPENDITURE SUMMARY

"I, THE UNDERSIGNED, DO HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE MATERIALS HAVE BEEN FURNISHED, THE SERVICES RENDERED OR THE LABOR PERFORMED AS DESCRIBED HEREIN, THAT ANY ADVANCE PAYMENT IS DUE AND PAYABLE PURSUANT TO A CONTRACT OR IS AVAILABLE AS AN OPTION FOR FULL OR PARTIAL FULFILLMENT OF A CONTRACTUAL OBLIGATION, AND THAT THE CLAIMS ARE JUST, DUE AND UNPAID OBLIGATIONS AGAINST THE CITY OF OLYMPIA, AND THAT I AM AUTHORIZED TO AUTHENTICATE AND CERTIFY TO SAID CLAIMS", AND,

"I, THE UNDERSIGNED, DO HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT CLAIMS FOR EMPLOYEE AND OFFICER EXPENSES ARE JUST, DUE AND UNPAID OBLIGATIONS AGAINST THE CITY OF OLYMPIA, AND THAT I AM AUTHORIZED TO CERTIFY SAID CLAIMS".

FOR PERIOD	<u>12/4/2016</u>		<u>12/10/2016</u>
FOR A/P CHECK NUMBERS	<u>3681401</u>	THROUGH	<u>3681614</u>
FOR ELECTRONIC PAYMENTS	<u>11/1/2016</u>	THROUGH	<u>11/30/2016</u>

INCLUSIVE IN THE AMOUNT TOTALING

DATED
December 13, 2016

ADMINISTRATIVE SERVICES DIRECTOR
Janet K. Kemo

TOTAL APPROVED FOR PAYMENT
FUND

\$981,263.06	001	GENERAL FUND
\$0.00	002	SHOP FACILITIES
\$311.42	003	REVOLVING ACCOUNT FUND
\$0.00	004	URBAN ARTERIAL FUND
\$171,534.82	006	
\$644.47	007	
\$24,156.00	025	WASHINGTON CENTER
\$0.00	026	MUNICIPAL ARTS FUND
\$11,854.85	029	EQUIP & FACIL REPLACE RES
\$5,445.23	107	HUD
\$0.00	108	HUD
\$0.00	127	IMPACT FEES
\$0.00	130	SEPA MITIGATION FUND
\$0.00	132	LODGING TAX FUND
\$0.00	133	ARTS AND CONFERENCE FUND
\$0.00	134	PARKS AND REC SIDEWALK UT TAX
\$3,156.28	135	PARKING BUSINESS IMP AREA
\$0.00	136	FARMERS MRKT REPAIR/REPLC
\$0.00	137	CHILDREN'S HANDS ON MUSEUM
\$0.00	138	TRANS BENEFIT DISTRICT
\$0.00	208	LID OBLIGATION CONTROL
\$0.00	216	4th/5th AVE PW TRST
\$0.00	223	LTGO BOND FUND '06-PARKS
\$0.00	224	UTGO BOND FUND 2009 FIRE
\$0.00	225	CITY HALL DEBT FUND
\$0.00	226	2010 LTGO BOND-STREETPROJ
\$0.00	227	LOCAL DEBT FUND
\$0.00	228	2010B LTGO BONDS-HOCM
\$93,240.40	317	CIP
\$0.00	322	4/5th AVE CORRIDOR/BRIDGE
\$0.00	323	CIP CONSTR FUND - PARKS
\$0.00	324	FIRE STATION 4 CONSTRUCT
\$0.00	325	CITY HALL CONST
\$0.00	326	TRANSPORTATION CONST
\$0.00	329	GO BOND PROJECT FUND
\$0.00	331	FIRE EQUIPMENT REPLACEMENT FUND
\$69,589.76	401	WATER
\$968,171.38	402	SEWER
\$42,930.21	403	SOLID WASTE
\$10,628.87	404	STORM AND SURFACE WATER
\$330.00	434	STORM AND SURFACE WATER CIP
\$20,517.65	461	WATER CIP FUND
\$0.00	462	SEWER CIP FUND
\$52,811.29	501	EQUIPMENT RENTAL
\$0.00	502	C. R. EQUIPMENT RENTAL
\$0.00	503	UNEMPLOYMENT COMPENSATION
\$0.00	504	INS TRUST FUND
\$52,048.39	505	WORKERS COMPENSATION
\$0.00	604	FIREMEN'S PENSION FUND
\$0.00	605	CUSTOMERS WATER RESERVE
\$0.00	614	
\$7,120.28	621	WASHINGTON CENTER ENDOW
\$0.00	631	PUBLIC FACILITIES
\$0.00	682	LAW ENFORCEMENT RECORD MGNTSYS
\$0.00	701	PARKS-NEIGHBORHOOD
\$0.00	702	PARKS-COMMUNITY
\$0.00	703	PARKS-OPEN SPACE
\$0.00	707	PARKS-SPECIAL USE
\$0.00	711	TRANSPORTATION
\$0.00	720	SCHOOLS

\$2,515,754.36 GRAND TOTAL FOR WEEK

CITY OF OLYMPIA
EXPENDITURE SUMMARY

"I THE UNDERSIGNED, DO HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE MATERIALS HAVE BEEN FURNISHED, THE SERVICES RENDERED OR THE LABOR PERFORMED AS DESCRIBED HEREIN, THAT ANY ADVANCE PAYMENT IS DUE AND PAYABLE PURSUANT TO A CONTRACT OR IS AVAILABLE AS AN OPTION FOR FULL OR PARTIAL FULFILLMENT OF A CONTRACTUAL OBLIGATION, AND THAT THE CLAIMS ARE JUST, DUE AND UNPAID OBLIGATIONS AGAINST THE CITY OF OLYMPIA, AND THAT I AM AUTHORIZED TO AUTHENTICATE AND CERTIFY TO SAID CLAIMS"; AND,

"I, THE UNDERSIGNED, DO HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT CLAIMS FOR EMPLOYEE AND OFFICER EXPENSES ARE JUST, DUE AND UNPAID OBLIGATIONS AGAINST THE CITY OF OLYMPIA, AND THAT I AM AUTHORIZED TO CERTIFY SAID CLAIMS".

FOR PERIOD 12/11/2016 12/17/2016
 FOR A/P CHECK NUMBERS 3681615 THROUGH 3681883
 FOR ELECTRONIC PAYMENTS _____ THROUGH _____

INCLUSIVE IN THE AMOUNT TOTALING

DATED

12-20-2016

ADMINISTRATIVE SERVICES DIRECTOR

Acting



TOTAL APPROVED FOR PAYMENT
FUND

\$203,979.49	001	GENERAL FUND
\$0.00	002	SHOP FACILITIES
\$41,419.76	003	REVOLVING ACCOUNT FUND
\$0.00	004	URBAN ARTERIAL FUND
\$78.00	006	
\$952.00	007	
\$1,034.61	025	WASHINGTON CENTER
\$952.80	026	MUNICIPAL ARTS FUND
\$0.00	029	EQUIP & FACIL REPLACE RES
\$2,268.28	107	HUD
\$0.00	108	HUD
\$0.00	127	IMPACT FEES
\$0.00	130	SEPA MITIGATION FUND
\$170.00	132	LODGING TAX FUND
\$0.00	133	ARTS AND CONFERENCE FUND
\$0.00	134	PARKS AND REC SIDEWALK UT TAX
\$372.85	135	PARKING BUSINESS IMP AREA
\$0.00	136	FARMERS MRKT REPAIR/REPLC
\$0.00	137	CHILDREN'S HANDS ON MUSEUM
\$0.00	138	TRANS BENEFIT DISTRICT
\$0.00	208	LID OBLIGATION CONTROL
\$0.00	216	4th/5th AVE PW TRST
\$0.00	223	LTGO BOND FUND '06-PARKS
\$0.00	224	UTGO BOND FUND 2009 FIRE
\$0.00	225	CITY HALL DEBT FUND
\$0.00	226	2010 LTGO BOND-STREETPROJ
\$0.00	227	LOCAL DEBT FUND
\$0.00	228	2010B LTGO BONDS-HOCM
\$56,292.77	317	CIP
\$0.00	322	4/5th AVE CORRIDOR/BRIDGE
\$0.00	323	CIP CONSTR FUND - PARKS
\$0.00	324	FIRE STATION 4 CONSTRUCT
\$0.00	325	CITY HALL CONST
\$0.00	326	TRANSPORTATION CONST
\$0.00	329	GO BOND PROJECT FUND
\$0.00	331	FIRE EQUIPMENT REPLACEMENT FUND
\$29,445.04	401	WATER
\$9,496.08	402	SEWER
\$48,333.99	403	SOLID WASTE
\$9,455.76	404	STORM AND SURFACE WATER
\$43,428.88	434	STORM AND SURFACE WATER CIP
\$1,539.80	461	WATER CIP FUND
\$9,766.25	462	SEWER CIP FUND
\$3,449.14	501	EQUIPMENT RENTAL
\$0.00	502	C. R. EQUIPMENT RENTAL
\$0.00	503	UNEMPLOYMENT COMPENSATION
\$0.00	504	INS TRUST FUND
\$0.00	505	WORKERS COMPENSATION
\$0.00	604	FIREMEN'S PENSION FUND
\$0.00	605	CUSTOMERS WATER RESERVE
\$0.00	614	
\$0.00	621	WASHINGTON CENTER ENDOW
\$0.00	631	PUBLIC FACILITIES
\$0.00	682	LAW ENFORCEMENT RECORD MGNTSYS
\$0.00	701	PARKS-NEIGHBORHOOD
\$0.00	702	PARKS-COMMUNITY
\$0.00	703	PARKS-OPEN SPACE
\$0.00	707	PARKS-SPECIAL USE
\$0.00	711	TRANSPORTATION
\$0.00	720	SCHOOLS

\$462,435.50 GRAND TOTAL FOR WEEK

CITY OF OLYMPIA
EXPENDITURE SUMMARY

"I THE UNDERSIGNED, DO HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE MATERIALS HAVE BEEN FURNISHED, THE SERVICES RENDERED OR THE LABOR PERFORMED AS DESCRIBED HEREIN, THAT ANY ADVANCE PAYMENT IS DUE AND PAYABLE PURSUANT TO A CONTRACT OR IS AVAILABLE AS AN OPTION FOR FULL OR PARTIAL FULFILLMENT OF A CONTRACTUAL OBLIGATION, AND THAT THE CLAIMS ARE JUST, DUE AND UNPAID OBLIGATIONS AGAINST THE CITY OF OLYMPIA, AND THAT I AM AUTHORIZED TO AUTHENTICATE AND CERTIFY TO SAID CLAIMS"; AND,

"I, THE UNDERSIGNED, DO HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT CLAIMS FOR EMPLOYEE AND OFFICER EXPENSES ARE JUST, DUE AND UNPAID OBLIGATIONS AGAINST THE CITY OF OLYMPIA, AND THAT I AM AUTHORIZED TO CERTIFY SAID CLAIMS".

FOR PERIOD 12/18/2016 12/24/2016
 FOR A/P CHECK NUMBERS 3681884 THROUGH 3682204
 FOR ELECTRONIC PAYMENTS _____ THROUGH _____

INCLUSIVE IN THE AMOUNT TOTALING

DATED

ADMINISTRATIVE SERVICES DIRECTOR

January 3, 2017

Jane Kukemo

TOTAL APPROVED FOR PAYMENT

FUND		
\$266,833.39	001	GENERAL FUND
\$0.00	002	SHOP FACILITIES
\$2,456.35	003	REVOLVING ACCOUNT FUND
\$0.00	004	URBAN ARTERIAL FUND
\$207.50	006	
\$12,390.40	007	
\$0.00	025	WASHINGTON CENTER
\$527.26	026	MUNICIPAL ARTS FUND
\$0.00	029	EQUIP & FACIL REPLACE RES
\$3,170.51	107	HUD
\$0.00	108	HUD
\$0.00	127	IMPACT FEES
\$0.00	130	SEPA MITIGATION FUND
\$10,582.34	132	LODGING TAX FUND
\$0.00	133	ARTS AND CONFERENCE FUND
\$98.78	134	PARKS AND REC SIDEWALK UT TAX
\$131.29	135	PARKING BUSINESS IMP AREA
\$0.00	136	FARMERS MRKT REPAIR/REPLC
\$0.00	137	CHILDREN'S HANDS ON MUSEUM
\$0.00	138	TRANS BENEFIT DISTRICT
\$0.00	208	LID OBLIGATION CONTROL
\$0.00	216	4th/5th AVE PW TRST
\$0.00	223	LTGO BOND FUND '06-PARKS
\$0.00	224	UTGO BOND FUND 2009 FIRE
\$0.00	225	CITY HALL DEBT FUND
\$0.00	226	2010 LTGO BOND-STREETPROJ
\$0.00	227	LOCAL DEBT FUND
\$0.00	228	2010B LTGO BONDS-HOCM
\$7,965.33	317	CIP
\$0.00	322	4/5th AVE CORRIDOR/BRIDGE
\$0.00	323	CIP CONSTR FUND - PARKS
\$0.00	324	FIRE STATION 4 CONSTRUCT
\$0.00	325	CITY HALL CONST
\$0.00	326	TRANSPORTATION CONST
\$0.00	329	GO BOND PROJECT FUND
\$0.00	331	FIRE EQUIPMENT REPLACEMENT FUND
\$27,567.98	401	WATER
\$10,084.35	402	SEWER
\$44,383.08	403	SOLID WASTE
\$6,805.37	404	STORM AND SURFACE WATER
\$182,883.92	434	STORM AND SURFACE WATER CIP
\$1,853.30	461	WATER CIP FUND
\$0.00	462	SEWER CIP FUND
\$2,477.28	501	EQUIPMENT RENTAL
\$0.00	502	C. R. EQUIPMENT RENTAL
\$0.00	503	UNEMPLOYMENT COMPENSATION
\$0.00	504	INS TRUST FUND
\$0.00	505	WORKERS COMPENSATION
\$0.00	604	FIREMEN'S PENSION FUND
\$0.00	605	CUSTOMERS WATER RESERVE
\$2,717.00	614	
\$0.00	621	WASHINGTON CENTER ENDOW
\$0.00	631	PUBLIC FACILITIES
\$0.00	682	LAW ENFORCEMENT RECORD MGNTSYS
\$0.00	701	PARKS-NEIGHBORHOOD
\$0.00	702	PARKS-COMMUNITY
\$0.00	703	PARKS-OPEN SPACE
\$0.00	707	PARKS-SPECIAL USE
\$0.00	711	TRANSPORTATION
\$20,960.00	720	SCHOOLS

\$604,095.43 GRAND TOTAL FOR WEEK

**CITY OF OLYMPIA
PAYROLL CERTIFICATION**

The Administrative Services Director of the City of Olympia, Washington, hereby certifies that the payroll gross earnings, benefits, and LEOFF I post-retirement insurance benefits for the pay cycle ending **11/30/2016** have been examined and are approved as recommended for payment.

Employees Net Pay:	<u>\$ 1,400,932.04</u>
Fire Pension Net Pay:	<u>\$ 27,157.83</u>
Employer Share of Benefits:	<u>\$ 667,704.99</u>
Employer Share of LEOFF I Police Post-Retirement Benefits:	<u>\$ 23,955.42</u>
Employer Share of LEOFF I Fire Post-Retirement Benefits:	<u>\$ 22,971.64</u>
TOTAL	<u><u>\$ 2,142,721.92</u></u>

Payroll Check Numbers	_____	_____	Manual Checks
And	<u>89491</u>	<u>89495</u>	Fire Pension Checks
And	<u>89496</u>	<u>89497</u>	Manual Checks
And	<u>89498</u>	<u>89629</u>	Semi Payroll Checks

and Direct Deposit transmission.

December 1, 2016
DATE


ADMINISTRATIVE SERVICES DIRECTOR

**CITY OF OLYMPIA
PAYROLL CERTIFICATION**

The Administrative Services Director of the City of Olympia, Washington, hereby certifies that the payroll gross earnings, benefits, and LEOFF I post-retirement insurance benefits for the pay cycle ending **12/15/2016** have been examined and are approved as recommended for payment.

Employees Net Pay:	<u>\$ 1,299,967.53</u>
Fire Pension Net Pay:	_____
Employer Share of Benefits:	<u>\$ 681,793.55</u>
Employer Share of LEOFF I Police Post-Retirement Benefits:	_____
Employer Share of LEOFF I Fire Post-Retirement Benefits:	_____
TOTAL	<u><u>\$ 1,981,761.08</u></u>

Payroll Check Numbers	<u>89630</u>	<u>89630</u>	Manual Checks
And	_____	_____	Fire Pension Checks
And	_____	_____	Manual Checks
And	<u>89631</u>	<u>89698</u>	Semi Payroll Checks

and Direct Deposit transmission.

12/16/2016
DATE


ADMINISTRATIVE SERVICES DIRECTOR, Acting

**CITY OF OLYMPIA
PAYROLL CERTIFICATION**

The Administrative Services Director of the City of Olympia, Washington, hereby certifies that the payroll gross earnings, benefits, and LEOFF I post-retirement insurance benefits for the pay cycle ending **12/31/2016** have been examined and are approved as recommended for payment.

Employees Net Pay:	<u>\$ 1,327,565.82</u>
Fire Pension Net Pay:	<u>\$ 27,157.83</u>
Employer Share of Benefits:	<u>\$ 681,996.67</u>
Employer Share of LEOFF I Police Post-Retirement Benefits:	<u>\$ 25,750.64</u>
Employer Share of LEOFF I Fire Post-Retirement Benefits:	<u>\$ 24,296.33</u>
TOTAL	<u><u>\$ 2,086,767.29</u></u>

Payroll Check Numbers	<u>-</u>	<u>-</u>	Manual Checks
And	<u>89699</u>	<u>89703</u>	Fire Pension Checks
And	<u>89704</u>	<u>89722</u>	Manual Checks
And	<u>89723</u>	<u>89757</u>	Semi Payroll Checks

and Direct Deposit transmission.

January 4, 2017
DATE

Janet Kikemo
ADMINISTRATIVE SERVICES DIRECTOR



City Council

Approval of Selection of Mayor Pro Tem

Agenda Date: 1/24/2017
Agenda Item Number: 4.E
File Number: 17-0079

Type: decision **Version:** 1 **Status:** Consent Calendar

Title

Approval of Selection of Mayor Pro Tem

Recommended Action

Committee Recommendation:

Not referred to committee.

City Manager Recommendation:

Move to select a Councilmember to serve as the Mayor Pro Tem.

Report

Issue:

Whether to designate a Mayor Pro Tem to serve in the absence of the Mayor.

Staff Contact:

Kellie Purce Braseth, Strategic Communications Director, 360.753.8361

Presenter:

None - Consent calendar item.

Background and Analysis:

At the beginning of a new council, the City Council appoints a fellow Councilmember to the role of Mayor Pro Tem. The Mayor Pro Tem serves in the absence of the mayor.



City Council

Approval of Bid Award for Fones Road Booster Pump Station

Agenda Date: 1/24/2017
Agenda Item Number: 4.F
File Number: 17-0003

Type: contract **Version:** 1 **Status:** Consent Calendar

Title

Approval of Bid Award for Fones Road Booster Pump Station

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to award the construction contract to McClure and Sons, Inc., in the amount of \$1,345,539.39 and authorize the City Manager to execute the contract.

Report

Issue:

Whether to award the construction contract for the Fones Road Booster Pump Station to McClure and Sons, Inc.

Staff Contact:

Tim Richardson, P.E., Project Manager, Public Works Engineering, 360.753.8749

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

This project will replace an aging drinking water booster pump station on Fones Road and 6th Street. The 45-year old booster pump station is essential to the City's water system. The facility is becoming increasingly unreliable.

The Fones Road Booster Pump Station helps move water from McAllister Wellfield to the eastside of Olympia. Booster pump stations increase the pressure in a pipeline and help pump water to higher elevations. The project will ensure adequate water pressure, water supply for fire protection and summer usage, and the ability to fill Hoffman Reservoir. The new pump station will also serve the soon-to-be constructed Log Cabin Road Reservoir. The City's adopted Water System Plan identifies this project as a priority.

Construction will begin in February and end in September, 2017.

Neighborhood/Community Interests:

The project team will work with nearby businesses to keep them up-to-date of the project and to help minimize disruption during the construction. The Bicycle and Pedestrian Advisory Committee (BPAC) has been informed of the project, due to its proximity to Olympia Woodland Trail.

Staff will inform citizens of project construction and impacts to traffic or service. We will use post cards, newsletters, Twitter, and the Construction News webpage to communicate with citizens.

Options:

1. Approve award of the construction contract to McClure and Sons, Inc. in the amount of \$1,345,539.39 and authorize the City Manager to execute the contract.

Project proceeds as planned. The City delivers on its commitment to construct the project this year. Olympia's Water System Plan is followed, ensuring the City meets storage requirements within this water pressure zone.

2. Don't approve award of the construction contract and reject all bids and request staff to rebid the project.

Delaying the project could have impacts to the low interest loan from the Environmental Protection Agency. Delaying the project may result in higher bids and will require additional staff time.

Financial Impact:

This project is identified in the Capital Facilities Plan. Funding for the project comes from the Drinking Water Utility. The bulk of funding is from a federal low-interest loan distributed by the Washington State, Drinking Water State Revolving Fund (DWSRF) program. The source of the loan is federal funds provided by the Environmental Protection Agency.

The low bid of \$1,345,539.39 is 20 percent below the Engineer's estimate. There are sufficient funds in the budget to complete this project.

Overall project costs:

Total Low Bid:	\$ 1,345,539
Contingency to Award (10%):	\$ 134,554
Engineering: Design, Inspection, Consultants, Fees, Permits	\$ 939,563
Total Estimated Project Cost:	\$ 2,419,656

Available Project Funding:	\$ 2,569,657
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Attachments:

- Summary of Bids
- Vicinity Map

SUMMARY OF BIDS RECEIVED



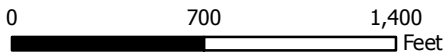
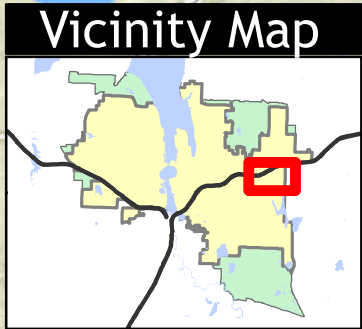
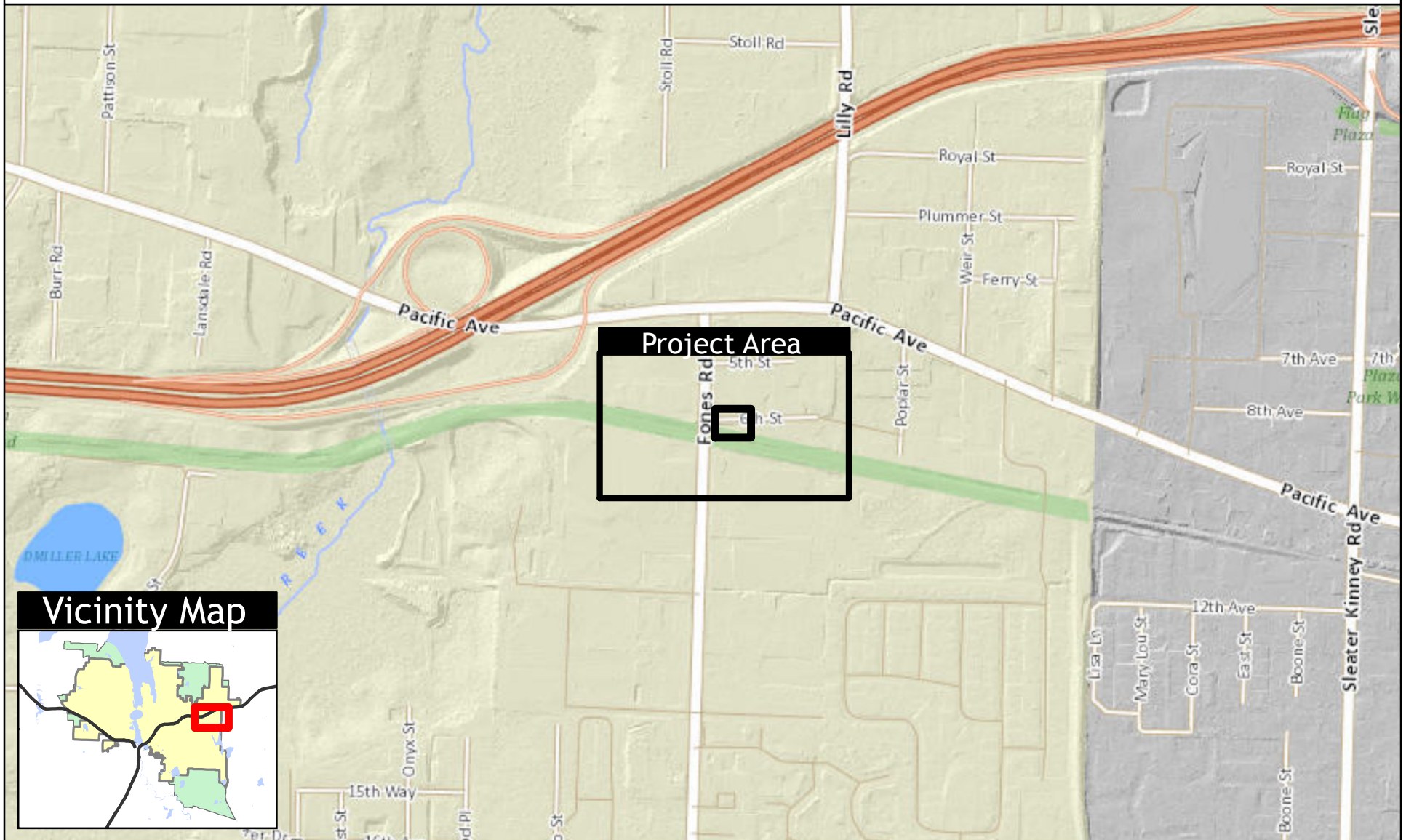
Project Name: Fones Road Booster Pump Station
Project Number: 1426P
Bid Opening Date: 1/10/2017

ENGINEER'S ESTIMATE	CITY OF OLYMPIA	\$	1,684,468.80
Bid #1	McClure and Sons, Inc.	\$	1,345,539.39
Bid #2	Rodarte Construction, Inc.	\$	1,378,827.84
Bid #3	JMG Constructors, LLC	\$	1,385,930.30
Bid #4	Rognlin's, Inc.	\$	1,431,358.66
Bid #5	Pease & Sons, Inc.	\$	1,471,442.28
Bid #6	Quigg Bros., Inc.	\$	1,495,613.76
Bid #7	Award Construction, Inc.	\$	1,552,895.87
Bid #8	TEK Construction, Inc.	\$	1,574,379.52
Bid #9	Harbor Pacific Contractors, Inc.	\$	1,603,363.84
Bid #10	Rotschy, Inc.	\$	1,604,859.84
Bid #11	Pacific Civil & Infrastructure, Inc.	\$	1,692,806.14
Bid #12	James W. Fowler Co.	\$	1,792,746.56
Bid #13	Northwest Cascade, Inc.	\$	2,008,622.08



Fones Road Booster Pump Station

Project #1426P



1 inch = 700 feet

Map printed 5/17/2016

For more information, please contact:
 Tim Richardson, Project Manager
 Email trichard@ci.olympia.wa.us
 (360) 753-8749

The City of Olympia and its personnel cannot assure the accuracy, completeness, reliability, or suitability of this information for any particular purpose. The parcels, right-of-ways, utilities and structures depicted hereon are based on record information and aerial photos only. It is recommended the recipient and/or user field verify all information prior to use. The use of this data for purposes other than those for which they were created may yield inaccurate or misleading results. The recipient may not assert any proprietary rights to this information. The City of Olympia and its personnel neither accept or assume liability or responsibility, whatsoever, for any activity involving this information with respect to lost profits, lost savings or any other consequential damages.





City Council

Approval of Resolution Setting a Public Hearing Date to Consider a Vacation Petition for a Portion of an Alley Right-of-Way Adjacent to 1919 Harrison Ave NW

Agenda Date: 1/24/2017
Agenda Item Number: 4.G
File Number: 17-0019

Type: resolution **Version:** 1 **Status:** Consent Calendar

Title

Approval of Resolution Setting a Public Hearing Date to Consider a Vacation Petition for a Portion of an Alley Right-of-Way Adjacent to 1919 Harrison Ave NW

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve a Resolution to schedule a Public Hearing on February 28, 2017 to hear public testimony regarding the vacation petition of a portion of Alley Right-of-Way adjacent to 1919 Harrison Ave NW.

Report

Issue:

Whether to schedule a public hearing on February 28, 2017 to hear public testimony regarding the vacation petition.

Staff Contact:

Ladd F. Cluff, City Surveyor, Public Works Engineering, 360.753.8389

Presenter(s):

None - Consent Calendar Item

Background and Analysis:

The property owner of 1919 Harrison Ave NW has asked the City to initiate the process to abandon a portion of an alley adjacent to their property.

Under state law RCW 35.79.010, the Council is required to adopt a resolution to set the public hearing date prior to acting on a right-of-way vacation petition. The statute states in part:

RCW 35.79.010

Petition by owners -- Fixing time for hearing.

The owners of an interest in any real estate abutting upon any street or alley who may desire to vacate the street or alley, or any part thereof, may petition the legislative authority to make vacation, giving a description of the property to be vacated, or the legislative authority may itself initiate by resolution such vacation procedure. The petition or resolution shall be filed with the city or town clerk, and, if the petition is signed by the owners of more than two-thirds of the property abutting upon the part of such street or alley sought to be vacated, legislative authority by resolution shall fix a time when the petition will be heard and determined by such authority or a committee thereof, which time shall not be more than sixty days nor less than twenty days after the date of the passage of such resolution.

Neighborhood/Community Interests (if known):

The public hearing will provide an opportunity for Council to hear from the community on the requested vacation.

Options:

Option 1. Approve the resolution setting February 28, 2017 as the date for the Public Hearing. This is within the required timeline of the proposed resolution.

Option 2. Do not approve the resolution setting February 28, 2017 as the date for the Public Hearing. Staff will work with Council to set another Public Hearing date that meets the statutory requirements.

Financial Impact:

None

Attachments:

Resolution

Petition

Petition Site Plan

Vicinity Map

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF OLYMPIA, WASHINGTON, FIXING FEBRUARY 28, 2017 AS THE DATE FOR PUBLIC HEARING ON A PROPOSAL TO VACATE AS A PUBLIC THOROUGHFARE A PORTION OF THE NORTH-SOUTH ALLEY RIGHT-OF-WAY ADJACENT TO 1919 HARRISON AVE NW.

WHEREAS, under state statute RCW 35.79.010, the City Council is required to adopt a resolution which sets a public hearing date for the consideration of a right-of-way vacation request; and

WHEREAS, the City Council of the City of Olympia has determined that a public hearing should be held regarding the proposal to vacate a portion of alley at 1919 Harrison Ave NW; and

WHEREAS, one of the purposes of this Resolution is to provide notice to residents and neighbors of the proposed road vacation;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The City Council, pursuant to RCW 35.79.010, hereby initiates procedures to vacate as a public thoroughfare the following described property:

That portion of the 12-foot wide alley in Block 37, Woodruff Addition to the City of Olympia, as recorded in Volume 3 of Plats, Page 40, records of Thurston County, Washington lying Northerly of the Easterly extension of the South line of Lot 5 in said Block 37.

Section 2. February 28, 2017, at the hour of 7:00 p.m. or thereafter, at the Olympia City Hall Council Chambers, 601 4th Avenue E, Olympia, Washington, is fixed as the time and place for the hearing on said proposed alley vacation, such time shall not be more than sixty days nor less than twenty days after the passage of this Resolution.

PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of _____ 2017.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Darrell H. Seneker

DEPUTY CITY ATTORNEY



PETITION TO VACATE PUBLIC RIGHT-OF-WAY

16-6519

RECEIVED DEC 14 2016 COMMUNITY PLANNING AND DEVELOPMENT DEPT. Community Planning & Development 601 4th Avenue - PO Box 1967 Olympia WA 98507-1967 Phone: 360.753.8314 Fax: 360.753.8087 cpdinfo@ci.olympia.wa.us www.olympiawa.gov

OFFICIAL USE ONLY

Applicant: Alicia Elliott Address: 1919 Harrison Ave NW Phone: 360.489.7359 File #: 16-6519 Receipt #: Date:

HONORABLE MAYOR AND CITY COUNCIL:

We, the undersigned, do hereby petition the Olympia City Council to vacate the following described public right-of-way:

LEGAL DESCRIPTION OF AFFECTED RIGHT-OF-WAY: That portion of the 12' wide alley in block 37 of Woodruff's Addition to the City of Olympia, as recorded in volume 3 of plats, page 40, records of Thurston County, WA lying northerly of the easterly extension of the south line of lot 5 in said block 37. (attached A)

PURPOSE OF REQUEST & STATEMENT OF PUBLIC BENEFIT:* To create a safe pedestrian and bike friendly access which restricts vehicle access through the north part of Block 37. (attached B)

*See criteria for approval on the reverse side of this form.

PETITIONERS

Table with 3 columns: Owner's Signature, Owner's Name (printed), Parcel Number. Rows include Alicia Elliott (Parkside Cafe, LLC), Orchard House LLC, Marie B&B LLC, and Jerry Lindley, Treasurer (West Central Park).

I verify that each of the above signatures represents a legal and registered owner of the property abutting the above-described right-of-way:

Applicant's Signature: Alicia Elliott Date: 12/14/16 Phone # 360-489-7359

Right of Vacation, WCP et al; List of Attachments

A: Legal Description

B: Purpose of Request and Statement of Public Benefit

C: Vicinity Map

D: Site Plan

E: 300' Radius Report



RIGHT OF VACATION
EXHIBIT "A"

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DEC 14 2016
COMMUNITY PLANNING
AND DEVELOPMENT DEPT.

THAT PORTION OF THE 12-FOOT WIDE ALLEY IN BLOCK 37 OF WOODRUFF'S ADDITION TO THE CITY OF OLYMPIA, AS RECORDED IN VOLUME 3 OF PLATS, PAGE 40, RECORDS OF THURSTON COUNTY, WASHINGTON LYING NORTHERLY OF THE EASTERLY EXTENSION OF THE SOUTH LINE OF LOT 5 IN SAID BLOCK 37.



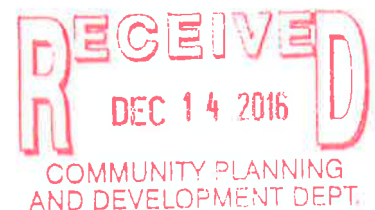
October 24, 2014

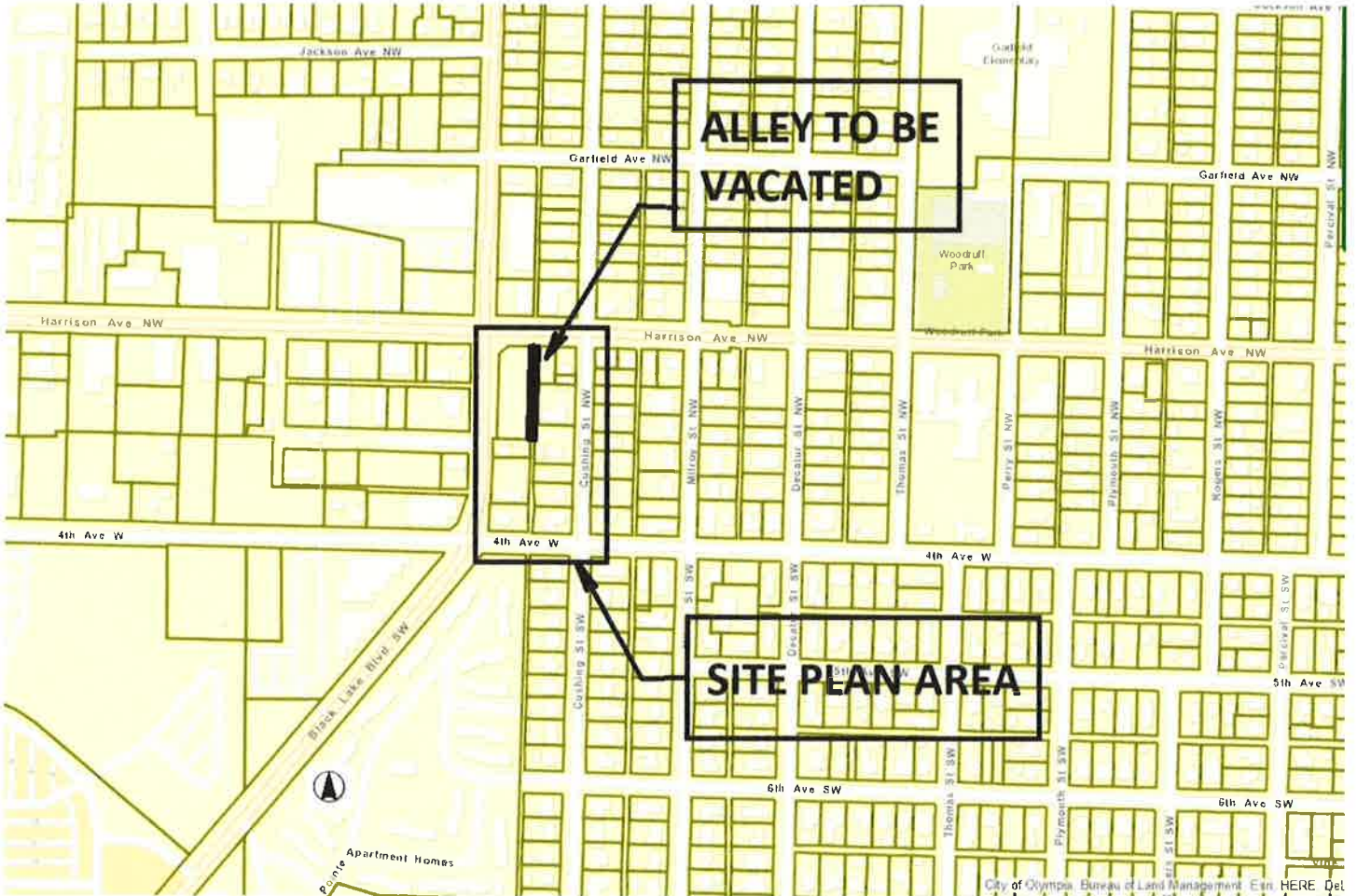
Right of Vacation, WCP et al; Attachment B

The West Central Park, The Parkside Cafe LLC, The Orchard House LLC, and the Marie B&B LLC, are requesting that the City vacate the north portion of the north-south alley, parallel to Division Street in Block 37 of Woodruff's Addition. The applicants own 100% of all property abutting the alley to be vacated, that portion of the north-south alley beginning at Harrison and ending at the southern boundary of the West Central Park. The applicants will dedicate easements to the City, the public and the Park for emergency, utility, pedestrian, bike and event access.

There are no properties abutting this section of the alley that have driveway access connected to the alley and vehicle access to residences abutting the south half of the alley will be preserved. The alley vacation will be providing and maintaining a safe pedestrian and bike access that will connect to services and transit nodes. The proposed vacation is consistent with the goals of the Olympia Comprehensive Plan and Development Standards by providing a safe, pedestrian friendly avenue through a key Westside community. The unique character of the West Central Park and the surrounding development offer an opportunity for neighbors to walk, bike, shop and gather. By restricting random vehicular traffic in the alley the applicants seek to increase the safety and walkability of the neighborhood and reduce harm to the environment. The alley vacation will also serve to decrease traffic feeding into the congested Harrison/Division intersection.

The applicants request that the Council grant a waiver of compensation for the alley vacation since they are not retaining the right-of-way solely for private use. The petitioners will grant easements for emergency, utility, public pedestrian and bike access as well as easements for community events at the West Central Park. The singular purpose of the vacation request is to eliminate random vehicle traffic, and thereby provide a safe bike and pedestrian lane for public use.





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AND DEVELOPMENT DEPT.

Vicinity Map

HARRISON AVENUE

NORTH CUSHING STREET

WEST 4th AVENUE

PROPOSED PARK SIDE CAFE & FOOD TRUCK COURT

PROPOSED EASEMENT

EXISTING EASEMENTS (TYP)

1909
CONSOLIDATED PARCELS
85003701901/
85003701902

135

PARCEL 85003701500

123

PARCEL 85003701700

ALLEY TO BE VACATED (DIAGONAL DASHED HATCH)

1919
WEST CENTRAL PARK

PARCEL 85003700100

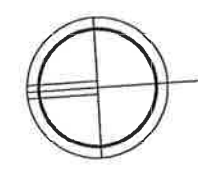
124

110 (FUTURE)

106

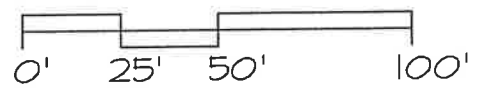
DIVISION STREET NW

PROPOSED PEDESTRIAN PATH (SHADED)



SITE PLAN

NORTH ALLEY VACATION
SCALE 1" = 50'

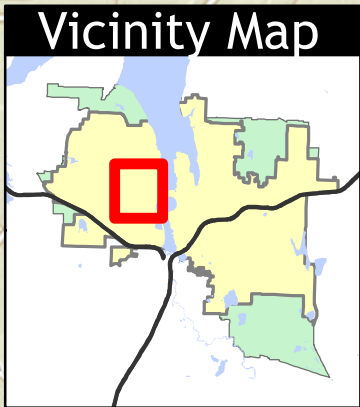
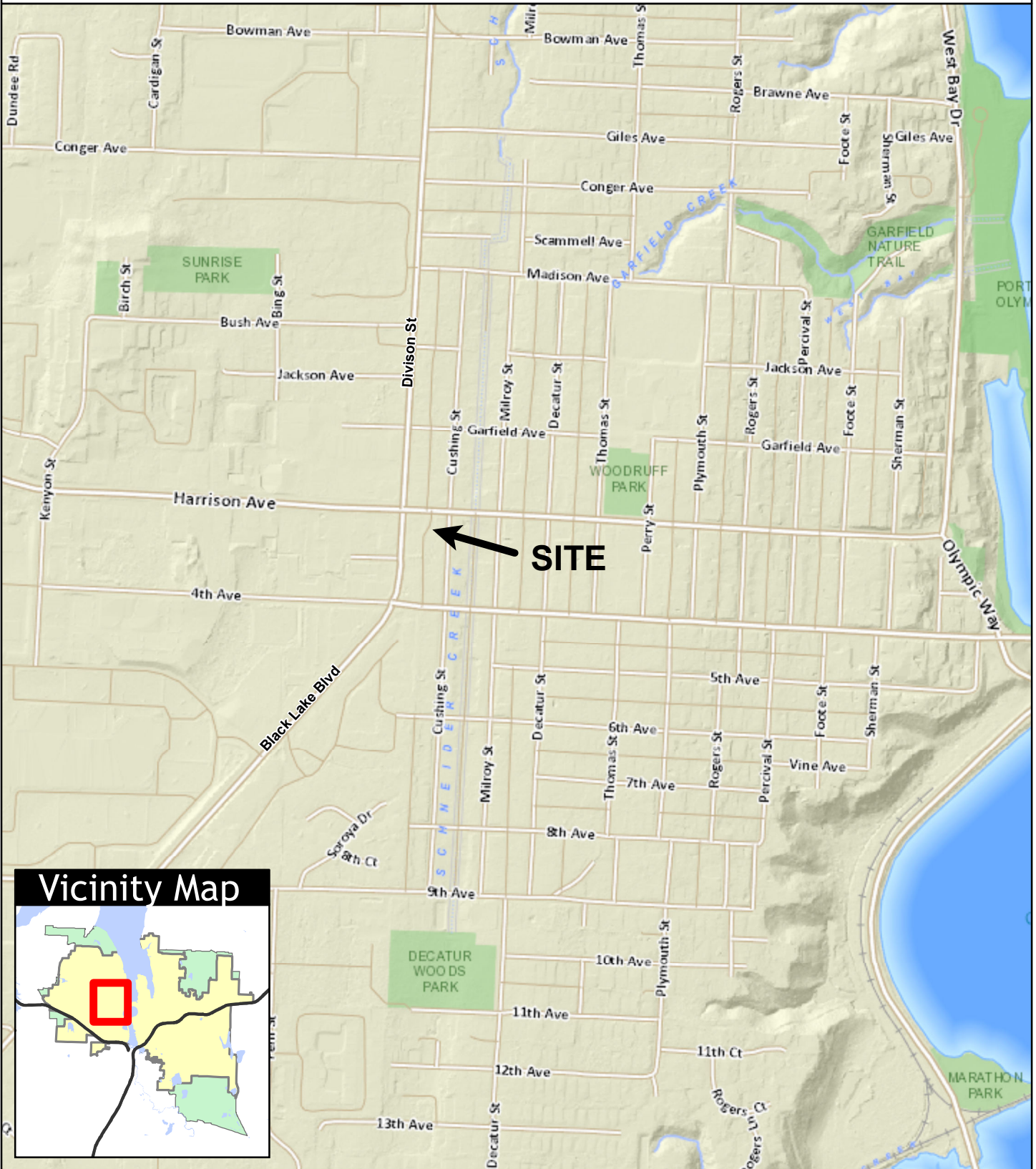


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DEC 14 2016
COMMUNITY PLANNING
AND DEVELOPMENT DEPT.



1919 Harrison Avenue

Proposed Alley Vacation



0 300 600
 Feet

1 inch = 800 feet

Map printed 5/4/2015

For more information, please contact:

Ladd Cluff, City Surveyor

(360) 753-8389

The City of Olympia and its personnel cannot assure the accuracy, completeness, reliability, or suitability of this information for any particular purpose. The parcels, right-of-ways, utilities and structures depicted hereon are based on record information and aerial photos only. It is recommended the recipient and/or user field verify all information prior to use. The use of this data for purposes other than those for which they were created may yield inaccurate or misleading results. The recipient may not assert any proprietary rights to this information. The City of Olympia and its personnel neither accept or assume liability or responsibility, whatsoever, for any activity involving this information with respect to lost profits, lost savings or any other consequential damages.





City Council

Approval of Interlocal Agreement with City of Tumwater for Fire Training

Agenda Date: 1/24/2017
Agenda Item Number: 4.H
File Number: 17-0049

Type: contract **Version:** 1 **Status:** Consent Calendar

Title

Approval of Interlocal Agreement with City of Tumwater for Fire Training

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve and authorize the Mayor to sign the Interlocal Agreement with the City of Tumwater for fire training and the use of the Mark Noble Regional Fire Training Center.

Report

Issue:

Whether to enter into an Interlocal Agreement with the City of Tumwater for fire training and Tumwater's use of the Mark Noble Regional Fire Training Center (MNRFTC).

Staff Contact:

Greg Wright, Deputy Fire Chief, 360.753.8466

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

A predecessor to this agreement came before council and was signed in late 2016. When the agreement was returned to Tumwater, there was a request for three minor wording changes that more clearly specified that any changes to the agreement would be in writing. These changes showed in three places. Olympia's Legal Department had no issues with the changes. The changes were made by Tumwater and they signed the document and returned it to Olympia Fire Department (OFD) staff. OFD routed the new document to legal where it was checked and signed. The agreement is now back to Olympia City Council for signature and the previous version that was only signed by Olympia was never valid.

Olympia Fire Department has developed a high performance training program and has built a state-of-the-art fire training complex, the Mark Noble Regional Fire Training Center. This training program

and facility supports the department's firefighting effort through readiness and safety training of the fire department personnel making them a more effective tool in the protection of the citizens of Olympia.

This level of performance has not gone unnoticed by the local fire service and is desired by other local jurisdictions for their firefighters. The fire department serving the City of Tumwater would like to continue participating in Olympia's training program and be able to use the Olympia facility. To this end, an Interlocal Agreement has been developed by the training staff of both departments. Along with the revenue received from Tumwater, the agreement defines the training program that Olympia will provide to Tumwater and Tumwater's access to the facility.

The agreement has been reviewed by the Administrative staffs of both departments and then reviewed by legal counsel for both entities. This new agreement continues the training currently being provided for Tumwater via an expiring agreement.

This Interlocal Agreement documents:

1. Compensation to the City of Olympia
2. The training program that will be provided to Tumwater
3. Liability coverage for Tumwater personnel using the MNRFTC
4. Management of any future joint assets

Neighborhood/Community Interests (if known):

None known.

Options:

1. Approve the Interlocal Agreement
Approving this Interlocal Agreement provides benefits to both Olympia and Tumwater in the fire service goal of providing well trained, safe and effective firefighters for their communities. The agreement brings revenue into the City to offset costs at the MNRFTC.
2. Do not approve the Interlocal Agreement and send it back to staff
Not approving this Interlocal Agreement eliminates planned revenue that would have offset increases in the training program expenses.

Financial Impact:

Contract defines revenue to the City of Olympia from the City of Tumwater for training and use of the MNRFTC (\$86,080.00 annually).

Attachments:

Interlocal Agreement

**INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF OLYMPIA AND THE CITY OF TUMWATER
FOR
TRAINING SERVICES AT THE CITY OF OLYMPIA MARK NOBLE REGIONAL
TRAINING CENTER**

1. This agreement for training services (“Agreement”) is between the City of Olympia (“OLYMPIA”) and the City of Tumwater (TUMWATER”).

2. **RECITALS.**

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

2.2 **Agreements Authorized.** Pursuant to RCW 39.34.080, each Party is authorized to contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform; provided, that such contract shall be authorized by the governing body of each Party to the contract and the contract sets forth the purposes, powers, rights, objectives and responsibilities of the contracting parties.

2.4 **Purpose.** The purpose of this Agreement is to provide detail of fire training, including consumables, to the Tumwater Fire Department (“TFD”) at OLYMPIA’s Mark Noble Regional Fire Training Center (“Training Center”) located at 1305 Fones Road in Olympia, Washington, subject to the terms and conditions outlined in this Agreement and any exhibits or attachments incorporated by reference.

3. **DEFINITIONS.** In this Agreement, the following words shall have the meanings set forth below:

3.1 **Director of Training:** – Chief of Operations at the Training Center, employed by OLYMPIA at the Olympia Fire Department (“OFD”), responsible for managing the Training Center, which includes but is not limited to, setting curricula, scheduling classes, conducting evaluations of the effectiveness of the training programs, selecting training personnel, and determining performance and participation standards.

3.2 **Training Officers:** Employees from the OFD, or other agencies, designated by the Director of Training to perform certain tasks.

3.3 **Instructors**: Employees from the OFD, or other agencies, designated by the Director of Training to train and instruct firefighters, firefighter paramedics, and fire officers of their own or another department/district.

4. RESPONSIBILITIES OF TFD

4.1 **General**. In its use of the Training Center, TFD personnel shall adhere to all OFD facility rules and regulations, policies, and schedules as set forth by the Director of Training and in Appendix B.

4.2 **Annual Fee and Training Deliverables**. TFD shall pay to OFD a fee for nonexclusive access to and use of the Training Center ("Annual Fee"). The Annual Fee and list of training deliverables is set out in Appendix A to this Agreement. As noted in appendix A, the annual fee may be increased upon written agreement of both parties for the 2018 to 2020 period to compensate for increased operating cost to OFD. In the event this Agreement is effective for portions of a year, the annual fee shall be pro-rated accordingly.

4.3 **Consumables**. TUMWATER shall pay a set fee to OLYMPIA for the use of standard consumables ("Consumables Fee"), above those defined in the list of deliverables. Consumables include items such as propane, smoke fluid, sheetrock, OSB, and similar supplies. The Consumables included in the contract are detailed in Appendix A.

4.4 **Method of Payment**. OFD will produce twice yearly billing statements on June 1 and December 1 that will include Annual and Consumables fees, as well as any additional costs provided for under this Agreement for TFD's use of the Training Center. TFD agrees to remit payment to the OFD within thirty (30) days of receipt of the OFD's invoice.

5. POLICIES & PROCEDURES – COMPLIANCE WITH LAW

5.1 **Policies**. TFD shall comply with OFD's Fire Training Center Rules & Regulations, Policies, and Procedures. These are subject to change at the discretion of OFD. Except when such advance notice is impractical or unreasonable, OFD shall give at least thirty (30) days' advance, posted written notice of any changes. Provided that, when training on or related to vehicles or equipment of TFD (e.g., water tender, crash rescue equipment), policies, procedures or protocols of TFD shall be followed. All policies and procedures shall be in writing and available to the Parties.

5.2 **Law**. The Parties shall comply with all applicable federal, state, and local laws including, without limitation, all OLYMPIA codes, ordinances, resolutions, and standards as they currently exist or are hereafter amended or newly adopted.

6. INDEMNIFICATION

6.1 **Indemnification**. TUMWATER shall defend, indemnify and hold OLYMPIA, its officers, officials, employees and volunteers harmless from and against any and all claims,

suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of TFD's use of the Training Center or from any activity, work or thing done, permitted, or suffered by TFD in or about the Training Center, except only such injury or damage as is caused by the negligence of OLYMPIA, subject to the terms of 6.2, below.

6.2 **No Indemnification for Joint TFD/OFD Training.** When OFD and TFD are training jointly at the Training Center, each party shall be responsible for its own defense of any claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property arising out of such joint training.

6.4 **Waiver of Immunity.** It is specifically and expressly understood that the indemnification provided herein constitutes the waiver by each Party to immunity under industrial insurance, Title 51 RCW, solely for the purposes of the indemnification under this Agreement Section 6. This waiver has been mutually negotiated by the Parties.

7. INSURANCE

TUMWATER shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the use of the Training Center.

7.1 **Minimum Scope of Insurance.** TUMWATER shall maintain insurance of the types described below, on the forms described or shall provide evidence of equivalent coverage through the Washington Cities Insurance Association (WCIA):

7.1.1 **Automobile Liability** insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

7.1.2 **Commercial General Liability** insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability.

7.1.3 **Workers' Compensation** coverage as required by the Industrial Insurance laws of the State of Washington.

7.2. **Minimum Amounts of Insurance.** TUMWATER shall maintain the following insurance limits:

7.2.1. **Automobile Liability** insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

7.2.3. **Commercial General Liability** insurance shall be written with limits no less than \$5,000,000 each occurrence, \$10,000,000 general aggregate.

7.3 **Verification of Coverage.** TUMWATER shall furnish OLYMPIA with certificates or other evidence of insurance coverage.

7.4 **Failure to Maintain Insurance.** Failure on the part of TUMWATER to maintain the insurance required shall constitute a material breach of Agreement, upon which OLYMPIA may, after giving written notice to TUMWATER to correct the breach, immediately terminate the Agreement.

7.5 **No Limitation.** TUMWATER's maintenance of insurance as required by the Agreement shall neither be construed to limit the liability of TUMWATER to the coverage provided by such insurance, nor to otherwise limit OLYMPIA's recourse to any remedy available at law or in equity.

8. **NO JOINT BOARD.** This Agreement creates no joint board and no separate legal entity.

9. DISPUTE RESOLUTION

9.1 **Informal.** The MNRFTC Director of Training, together with a TFD Chief, shall meet and attempt to resolve any matter of training, scheduling, personnel, financing or any other dispute arising out of this Agreement. In the event that the parties fail to resolve the dispute, the Fire Chief of each Party shall meet and attempt to resolve any remaining issues. In the event the parties remain unable to reach agreement, the City Manager of the City of Olympia, who has ultimate authority over the Training Center and its activities, shall make a final decision on the dispute.

9.2 **Mediation.** Should TUMWATER disagree with the OLYMPIA City Manager's decision, TUMWATER may request mediation within thirty (30) days of the City Manager's decision. Upon agreement to mediate, the Parties shall attempt to mediate the dispute through a mutually agreeable third party. The cost of the mutually agreeable mediator will be born equally by the parties. Either party may terminate mediation at any time. If the parties cannot agree to a decision at mediation, either party may take such action as authorized under the Agreement, including commencement of an action in court.

10. GENERAL

10.1 **Amendments.** No amendment to this Agreement shall be valid unless evidenced in writing, properly agreed to and authorized by each Party's governing authority.

10.2 **Severability.** If any provision of this Agreement or its application is held invalid, the remainder of the Agreement or the application of the remainder of the Agreement shall remain valid and in full force and effect.

10.3 **No Third Party Benefits.** This Agreement is entered into for the benefit of the Parties to the Agreement only and shall confer no benefits, direct or implied, on any third persons.

10.4 **Assignment**. Neither TUMWATER nor OLYMPIA shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

10.5 **No Waiver**. Failure or delay of either Party to declare any breach or default immediately upon occurrence shall not waive such breach or default.

10.6 **Captions**. The respective captions of the Sections of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect any of the provisions of this Agreement.

10.7 **Equal Opportunity to Draft**. The Parties have participated and had an equal opportunity to participate in the drafting of this Agreement and Appendix. No ambiguity shall be construed against either Party upon a claim that the Party drafted ambiguous language.

10.8 **Recording**. Prior to its entry, this Agreement shall be filed with the Thurston County Auditor's Office or posted upon the websites or other electronically retrievable public source as required by RCW 39.34.040.

10.9 **Notice**. Any notice required under this Agreement shall be to the Party at the address listed below and shall become effective three (3) days following the date of deposit in the United States Postal Service.

OLYMPIA

Attn: Fire Chief
Re: Training Agreement with City of Tumwater
PO Box 1967
Olympia, WA 98507-1967

TUMWATER

Attn: Fire Chief
Re: Training Agreement with City of Olympia
555 Israel Rd. S.W.
Tumwater, WA 98501

10.10 **Interpretation and Venue**. This Agreement shall be governed by the laws of the State of Washington as to interpretation and performance. The Parties hereby agree that venue for enforcement of this Agreement shall be the Superior Court of Thurston County.

10.11 **Entire Agreement**. This Agreement and Appendix A set forth all terms and conditions agreed upon by the OLYMPIA and TUMWATER, and supersedes any and all agreements oral or otherwise with respect to the subject matter addressed herein.

11. RECORDS

11.1 **Financial Records.** Each Party agrees to maintain books, records, and documents which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and maintain such accounting procedures and practices as may be deemed necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject, at all reasonable times, to inspection, review or audit by the other Party, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

11.2 **Public Records Generally.** Each Party shall maintain public records in accordance with state law, in the manner and for the time period applicable to such records. If either Party receives a request for records created as a part of this program, each Party agrees to fully cooperate with the other in a timely response to any such request.

11.3 **Training Records.** TFD shall be responsible for maintaining a contract with Target Solutions in support of this Interlocal with City of Olympia. See Appendix A for detail of specific responsibilities of each agency.

12. DURATION OF AGREEMENT & TERMINATION

12.1 **Effective Date.** This Agreement shall take effect on 1/1/2017 or the date of the last authorizing signature affixed and proper recording hereto.

12.2 **Term.** Unless otherwise terminated as provided herein, this Agreement shall continue until December 31, 2020.

12.3 **Non-Appropriation of Funds.** If sufficient funds are not appropriated or allocated for payment under this Agreement for any future budget (calendar) year, neither OLYMPIA nor TUMWATER will be obligated to continue the Agreement after the end of the current calendar year, and this Agreement will automatically terminate upon the completion of all remaining Services for which funds are allocated. No penalty or expense shall accrue to either Party in the event this provision applies.

12.4 **Surviving Provisions.** Agreement Sections 6 and 11 shall survive the termination of this Agreement, pursuant to their terms.

13. **AUTHORIZATION AND EXECUTION.** Each Party warrants that it is duly authorized to enter this Agreement and that the person(s) executing the Agreement are authorized to execute the Agreement for and on behalf of the identified Party

CITY OF OLYMPIA

Approved as to Form:

Mayor Cheryl Selby

City Attorney


(DCA)


Date: _____

CITY OF TUMWATER

Approved as to Form:



Mayor Pete Kmet



City Attorney

Date: 12-22-2016

APPENDIX A

FUNDING, DELIVERABLES AND RESPONSIBILITIES

(1) Annual Fee: TUMWATER shall pay to OLYMPIA a flat rate annual **\$86,080** fee for specific fire training as detailed, nonexclusive access to the Training Center property for fire training as outlined in this Agreement, and certain Consumables. Fee may be increased upon written agreement of both parties for the 2018 to 2020 period to compensate for increased operating cost to OFD.

(2) Scheduling: TFD is responsible for coordinating scheduling with OFD, so as to avoid any scheduling conflicts with other training. After the training schedule is set by OFD, communication to TFD Members regarding schedules and training content is the responsibility of TFD.

(3) Consumables: TUMWATER shall pay to OLYMPIA for consumables above and beyond those described in Training Deliverables, below. The fee included in the annual fee includes items such as, propane, smoke fluid, sheetrock, and the first 90 sheets of OSB.

(4) Training Deliverables:

Completion of this training meets:

- Washington Administrative Code 296-305
- NFPA requirements of 1403 “Standards on Live Fire Training Evolutions”

APPENDIX A (cont.)

Annually

<i>Blue Card Command Training</i>		<i>Target Solution Records Management</i>		<i>Discretionary Training</i>	
<i>Required on-line course not included within this contract</i>	<i>Train all TFD Officers in initial BC Certification Program AND; provide monthly command sim-training at CTC (last Thursday of month)</i>	<i>Per-Person cost paid directly to Target Solutions</i>	<i>Records Management through Target Solutions Platform. See attached list of defined deliverables section (5)</i>	<i>TFD and/or OFD instruction plus TFD self-directed training (first 90 sheets of OSB included)</i>	<i>TFD shall have access to full MNRFTC campus (as available) no less than 150 hours annually</i>
		<i>Multi Company Operations Training</i>			
<i>Live Fire Training</i>		<i>Fire Ground Survival</i>		<i>Search and Rescue/May Day Ops/Truck Co. Operations</i>	
<i>Direct Delivery (includes propane, ntg, and smoke fluid)</i>	<i>Members engaged in firefighting duties certified bi-annually</i>	<i>Direct Delivery (includes sheetrock for prop)</i>	<i>Member engaged in firefighting certified bi-annually</i>	<i>Includes consumables as needed per discipline</i>	<i>TFD will be offered one slot for each of their three shifts at every CMT HOT event offered.</i>

(5) Records Management through Target Solutions; Detail

Olympia will provide Record Management through Target Solutions for all uniformed TFD members to include:

- Initial platform set-up to include entering personnel data
- Initial training of all users to be coordinated and managed and validated by designated TFD medic or officer.
- Distribution of required WAC, and Capital Metro Training to be coordinated and managed and validated by designated TFD medic or officer.
- Distribution of Thurston Co. EMT required training to be coordinated and managed and validated by designated TFD medic or officer.
- Administrative training for TFD Training Officer to manage training records outside the scope of CMT and required annual training.

APPENDIX A (cont.)

- Data entry of Capitol Metro training events.
- Records management for volunteers may be negotiated but is not within the scope of this agreement.

(6) TFD will ensure that:

- Responsible TFD members will provide personnel training rosters to OFD with all required information, for entry into Target Solutions by OFD in a timely manner.
- Responsibility of quality control within the Target Solutions site and entered/archived data pertaining to TFD members remains with the Tumwater Fire Department and TFD Designated Training Officer.
- Assure that TFD members adhere to the rules & regulations for use of premises. (Appendix B)
- A contract with Target Solutions, consistent with the features specified by the City of Olympia remains in force throughout the duration of this agreement.

(7) Attendance:

- Attendance at scheduled training is required. Absences will be counted as training hours.
- City of Olympia will not be liable for any issues arising from TFD members not completing on-line or hands on assigned training.

(8) Specific Training/Curricula:

- Live Fire Training – Blue Card Simulations, and “The Nozzle Forward”
- Fire Ground Survival – Joint IAFF & IAFC copyrighted program.
- Other (discretionary) curricula, as approved by the Director of Training.

(9) Operational Contacts for OLYMPIA (in order of authority):

1. Olympia Training Officer (Initial Contact)

2. Director of Training for MNRFTC

3. Olympia Fire Chief

4. Olympia City Manager (Highest Authority)

APPENDIX B

CITY OF OLYMPIA MARK NOBLE REGIONAL FIRE TRAINING CENTER RULES & REGULATIONS FOR USE OF PREMISES UPDATED MAY, 2013

General rules:

- All fire training shall be performed in accordance with all applicable laws, regulations, and safety standards including but not limited to NFPA standards and applicable WAC provisions;
- There shall be no alteration of onsite props;
- Users are required to remove all personal items at the end of the training and shall leave the facilities and grounds in the same condition as when they arrived;
- User shall supervise trainees and ensure that all trainees are properly informed about rules and regulations of the facility as well as proper protocol for the particular Training;
- User understands that additional instruction and/or training may be occurring in other areas of the MNRFTC at the same time as User's Training and User will ensure that trainees stay within the areas specifically reserved for this Training, except when necessary to enter or exit the MNRFTC.
- Decisions of the City of Olympia's designated MNRFTC Trainers and Instructors are final.

Rules specific to classroom use:

- Occupancy is limited to 30;
- Food and beverages are allowed at the trainer's discretion.

For rules specific to live fire training, see the document entitled,
STRUCTURAL FIRE TRAINER ACTION PLAN (issued at time of live fire training event).

Misuse of the facility and/or failure to comply with these Rules & Regulations, as well as those posted on the Premises, may result in the City's cancellation and/or early termination of a training event, possible forfeiture of the fee and potential denial of any future use.

Reservations & Fees:

- Reservations and fees cannot be transferred to another organization and/or individual without the express written permission of the MNRFTC Director of Training ("Director").

Cancellation:

- Should User wish to cancel the Training, notice to the City must be received at least seven (7) days prior to the scheduled Training except for instances of Greater Alarm Calls or disasters. User recognizes that without proper notice of cancellation, the City may be unable to schedule another event in the area that was to be used for the Training. **Should User cancel without the required notice, the availability of future training reservations will be at the sole discretion of the City depending on the circumstances.**



City Council

Approval of Ordinance on Corrected Second Reading Approving a Street Vacation Petition for a Portion of Hillside Drive SE

Agenda Date: 1/24/2017
Agenda Item Number: 4.1
File Number: 17-0078

Type: ordinance **Version:** 1 **Status:** 1st Reading-Consent

Title

Approval of Ordinance on Corrected Second Reading Approving a Street Vacation Petition for a Portion of Hillside Drive SE

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Approve on corrected second reading an ordinance to vacate a portion of Hillside Drive, SE and a portion of Tract A, Henderson Commercial Park

Report

Issue:

Whether the City Council should pass an ordinance vacating a portion of Hillside Drive SE and a portion of Tract A, Henderson Commercial Park.

Staff Contact:

Darren Nienaber, Deputy City Attorney, 360.753.8223

Ladd F. Cluff, PLS, City Surveyor, Public Works Engineering, 360.753.8389

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

On January 10, 2017, the City Council approved on second reading an ordinance vacating as a public thoroughfare a portion of Hillside Drive SE and a portion of the Pedestrian Access Trail known as Tract A of the Henderson Commercial Park Binding Site Plan. The ordinance authorized the abutting property owners to construct and grant to the City a pedestrian access easement as compensation in lieu of the payment required under OMC Chapter 12.16 and RCW 35.79.010.

Section 4 of the ordinance approved on January 10 states:

Section 4. I, Jane Ragland Kirkemo, City Clerk/Treasurer, hereby certify that an amount equal to one-half of the appraised value of property above vacated was _____ was not _____ received within the time referred to above.

This section is not tailored to a street vacation when another type of compensation is made in lieu of payment. That section has been replaced with a new Section 4 tailored to the trade of easements described in Section 3 of the ordinance. The ordinance is before the Council for a corrected second reading.

Neighborhood/Community Interests (if known):

None known.

Options:

1. Move to approve on a corrected second reading an ordinance to vacate a portion of Hillside Drive SE and a portion of Tract A, Henderson Commercial Park. This option allows the vacation to occur, site development to continue, and pedestrian access to be constructed.
2. Reject the vacation request. This option would leave the right-of-way as it is. Development of the site will require revision, slowing the development process.

Financial Impact:

None

Attachments:

Ordinance

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON VACATING AS A PUBLIC THOROUGHFARE A PORTION OF HILLSIDE DRIVE SE AND A PORTION OF THE PEDESTRIAN ACCESS TRAIL KNOWN AS TRACT "A" OF HENDERSON COMMERCIAL PARK BINDING SITE PLAN

WHEREAS, the Olympia City Council adopted Resolution No. M-1852 on November 1, 2016, setting a public hearing date for December 6, 2016, at 7:00 p.m. to allow public comment for or against vacation of the following described public thoroughfare situated in the City of Olympia, Thurston County, State of Washington, to wit:

PARCEL A

That portion of land dedicated to the City of Olympia, as recorded January 4, 1965 under recording number 813551, records of Thurston County, Washington; together with:

That portion of Tract 48 and Hillside Drive as shown on the plat of Wildwood Park, recorded in Volume 9 of Plats, Page 39, records of Thurston County, Washington, lying northerly of the south line of Tract 44 of said Plat, and its westerly extension, and lying southerly of the north line of the south 100 feet of said Tract 44 and its westerly extension, and lying easterly of said land dedicated to the City of Olympia, recording number 813551, and lying westerly of the following described line:

*Commencing at the Southwest corner of said Tract 44; thence westerly along the westerly extension of said south line of Tract 44 North 88°13'59" West 31.74 feet to its intersection with said westerly margin of Hillside Drive and the **POINT OF BEGINNING** of said line; thence leaving said south line North 03°02'40" West 52.92 feet; thence North 27°20'14" East 52.39 feet to the southerly boundary of Lot 1 of Henderson Commercial Park Binding Site Plan, as recorded February 1, 2008 under recording number 3986666, and the **TERMINUS** of said line.*

PARCEL B

That portion of Tract "A" of Henderson Commercial Park Binding Site Plan, as recorded February 1, 2008 under recording number 3986666, records of Thurston County, Washington, lying westerly of the following described line:

***BEGINNING** at the Northeast corner of Lot 1 of said Binding Site Plan; thence South 63°28'16" East 0.63 feet; thence South 28°36'47" West 68.07 feet; thence South 27°20'14" West 70.82 feet to the westerly boundary of said Tract "A" and the **TERMINUS** of said line.*

Containing 6,335 square feet or 0.15 acres, more or less.

WHEREAS, the petitioner is requesting that a portion of Hillside Drive SE and a portion of the pedestrian access trail described above be vacated; and

WHEREAS, notice of this proposed vacation was posted physically on site, and adjoining neighbors were mailed notice of the hearing; and

WHEREAS, a public hearing was held by the City Council of the City of Olympia on said petition on December 6, 2016, at 7:00 p.m. or thereafter in the evening; and

WHEREAS, the City has received no comments objecting to the vacation from utility providers with regard to this vacation; and

WHEREAS, the Public Works Department has indicated that the property has no known current or foreseeable future use to the City as a right-of-way; and

WHEREAS, this vacation is deemed to be in the public interest and serve the public welfare;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. As recommended by the City of Olympia Public Works Department and as requested by the owner of the abutting parcels, the Olympia City Council, pursuant to RCW 35.79.010, hereby vacates as a public thoroughfare the herein above described property.

Section 2. The vacation meets the criteria set forth in OMC 12.16.100.

Section 3. This Ordinance shall not become effective until the owners of the abutting property grant to the City of Olympia and construct a pedestrian access easement as shown on Exhibit "A" in lieu of payment required under OMC 12.16.030, .080, .090 and RCW 35.79.030 for the area so vacated. Failure of the abutting property owners to grant an easement within ninety (90) days of the passage of this Ordinance shall automatically void the petition and this Ordinance without it being brought back before the City Council. The City Clerk/Treasurer shall certify on the face of this Ordinance whether or not the easement is received within the time limit referred to above.

Section 4. I, City Clerk/Treasurer, hereby certify that payment in the form of an easement approved the City Council in Section 3 above in accordance with OMC 12.16.080 was was not received.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Darren Nienaber

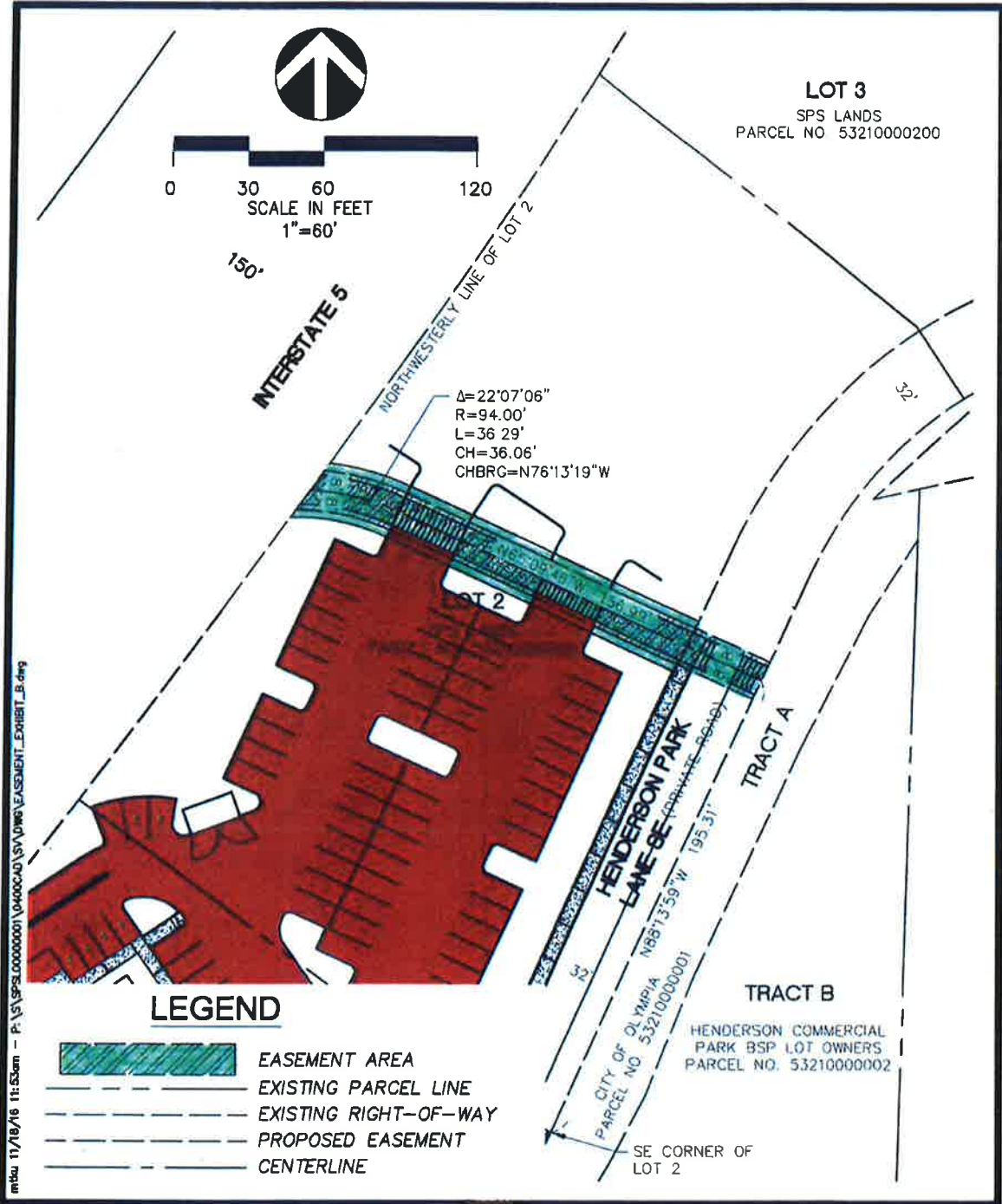
DEPUTY CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED:

EXHIBIT A



m:\du 11/18/16 11:53am - P:\S\SPS\00000001\0400CAD\SPS\DWG\EASEMENT_EXHIBIT_B.dwg



EASEMENT AREA: 3,093 SF

OWNER: SPS LANDS
OLYMPIA, WASHINGTON



**DAVID EVANS
AND ASSOCIATES INC.**
2106 Pacific Avenue Suite 400
Tacoma Washington 98402
Phone: 253.922.9780



City Council

Public Hearing on Potential Transfer of the McAllister Springs Properties to the Nisqually Indian Tribe

Agenda Date: 1/24/2017
Agenda Item Number: 5.A
File Number: 17-0088

Type: public hearing **Version:** 1 **Status:** Public Hearing

Title

Public Hearing on Potential Transfer of the McAllister Springs Properties to the Nisqually Indian Tribe

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Hold a public hearing on the potential transfer of the McAllister Springs properties to the Nisqually Indian Tribe. Following the public hearing, adopt a resolution authorizing the Mayor and City Manager to sign all documents necessary to effect the transfer of the properties to the Nisqually Tribe.

Report

Issue:

Whether to transfer the McAllister Springs properties to the Nisqually Indian Tribe

Staff Contact:

Rich Hoey, P.E., Public Works Director, 360.753.8495

Presenter(s):

Rich Hoey, P.E., Public Works Director

Background and Analysis:

In early 2015, the City moved its drinking water supply from McAllister Springs to the more protected McAllister Wellfield. The City took this action to comply with federal and state statutes and regulations requiring improved safety of public drinking water sources. McAllister Springs had been the City's main source of drinking water since the late 1940s. Over the past two years, the McAllister Springs facilities have sat idle and are no longer in use.

On January 10, 2017, the City Council passed a resolution declaring four of the McAllister Springs properties, totaling 177.2 acres, as surplus to the needs of the City's Drinking Water Utility. These properties are shown as parcels A, C, D and E on the attached map. Parcel B includes the main

water transmission line from the McAllister Wellfield and remains vital for the City's Drinking Water Utility. Parcel B will be retained by the City.

The development of the McAllister Wellfield has been a cooperative effort with the Nisqually Tribe. In May 2008, the City and Tribe entered into a historic agreement to jointly develop the Wellfield, and to permanently protect the environmentally sensitive McAllister Springs. McAllister Springs, known as She-Nah-Num to the Nisqually Tribe, is the headwaters of McAllister (Medicine) Creek and is historically and culturally important to the Tribe. The 2008 agreement creates conservation restrictions on the properties, and calls for the City and Tribe to work together on access and a plan for long-term use for the properties.

The City Council voted to surplus the McAllister Springs properties due to concern over on-going costs and liabilities associated with maintenance of the properties. On-going costs for taxes, insurance, fire protection, and site maintenance are \$25,000 to \$30,000 per year. In addition, known facility repair costs exceed \$145,000, and are increasing. The City also has legal liabilities connected with its ownership of the properties. These costs and liabilities are currently being borne by the City's utility rate payers.

While the original agreement with the Nisqually Tribe called on the City to retain ownership of the property, the Tribe has expressed a willingness to take over ownership of the property along with all maintenance costs and liabilities. The Tribe has also expressed a willingness to ensure permanent protection of the properties, and to grant the City periodic access for environmental educational purposes. As a result, the City would keep its obligations under the original agreement, while the Tribe takes on the additional costs and liabilities of ownership. This would represent a relief of burden to Drinking Water Utility ratepayers.

The conditions for the transfer of the four McAllister Springs properties are reflected in the attached documents: 1) Real Estate Transfer Agreement, 2) Statutory Warranty Deed, and 3) Easement Agreement. The Real Estate Transfer Agreement proposes that the Tribe will accept the properties AS-IS, and refers to important conditions in the Statutory Warranty Deed regarding permanent protection of the property. The Easement Agreement provides the City access educational and scientific purposes and for necessary maintenance of a single family well and fire line.

Neighborhood/Community Interests (if known):

The City no longer uses McAllister Springs as a water supply, yet maintenance of the buildings and grounds is currently being borne by the City's water utility rate payers. Over the years, many residents and school groups have toured McAllister Springs for environmental education purposes. There is interest in maintaining access to the property for this type of environmental education.

Options:

1. Adopt a resolution authorizing the Mayor and City Manager to sign all documents necessary to effect the transfer of the properties to the Nisqually Tribe. This option keeps the City's obligations under the 2008 Memorandum of Agreement, while relieving cost burden to utility rate payers.
2. Pursue an alternate disposition of the McAllister Springs properties in keeping with the 2008 Agreement with the Nisqually Tribe.
3. Retain the McAllister Springs properties and continue to incur maintenance costs and liabilities.

Financial Impact:

The Drinking Water Utility currently bears the costs of maintaining the McAllister Springs property and facilities. The current assessed value of the four parcels, including vacant water facility buildings, is \$1,109,450.

Attachments:

1. Resolution
2. Real Estate Transfer Agreement
3. Statutory Warranty Deed
4. Easement Agreement
5. Map of McAllister Springs properties

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, APPROVING THE DISPOSITION AND CONVEYANCE OF CERTAIN SURPLUS McALLISTER SPRINGS PROPERTIES TO THE NISQUALLY INDIAN TRIBE FOR VALUABLE CONSIDERATIONS AND UPON RELEVANT TERMS AND CONDITIONS RESTRICTING USE OF THE PROPERTIES, TOGETHER WITH FINDINGS OF FACT AND THE COUNCIL'S CONCLUSION THAT THE CONVEYANCE IS IN THE BEST PUBLIC INTEREST AND AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE DOCUMENTS OF CONVEYANCE ON BEHALF OF THE CITY.

WHEREAS, the City of Olympia 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, 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, on May 14, 2008, the City of Olympia and the Nisqually Indian Tribe entered into a Memorandum of Agreement (hereafter "MOA") that provided a framework and terms and conditions for cooperative work on the shared issues of water supply and water resources stewardship, resulting in a historic partnership to jointly develop the City's new McAllister Wellfield, share in water resource mitigation, to form the Nisqually Stewardship Coalition and to permanently protect McAllister Springs; and

WHEREAS, the City of Olympia and Nisqually Indian Tribe agreed in the MOA to permanently protect McAllister Springs, to place conservation restrictions on the use of the City's property, to provide for the City's ongoing ownership and access for the Tribe, and to provide for joint planning by the City and Tribe for the future of McAllister Springs; and

WHEREAS, the City of Olympia owns real property in Thurston County, Washington, in an area known as McAllister Springs that historically served as a water supply source before the City of Olympia developed and commenced the use of the McAllister Wellfield; and

WHEREAS, the City of Olympia holds fee simple ownership of the McAllister Springs properties, consisting of five parcels of land totaling approximately 181.5 acres, more or less; and

WHEREAS, the MOA provided for the City of Olympia to retain ownership of the McAllister Springs and Abbott Springs properties (hereafter jointly referred to as "McAllister

Springs”) and negotiate a long term agreement for conservation status and use by the Nisqually Indian Tribe; and

WHEREAS, the City transitioned off the McAllister Springs water source due to requirements of the federal Safe Drinking Water Act which would have required the City’s Drinking Water Utility to perform costly additional treatment of the water source at McAllister Springs, the risk of hazardous spills from adjacent BNSF rail line, and sea level rise; and

WHEREAS, the Washington State Department of Health required physical disconnection from McAllister Springs, an unfiltered water source from the City’s water supply as a condition of the City’s development of the McAllister Wellfield; and

WHEREAS, the City of Olympia’s water rights were fully transferred to the new McAllister Wellfield and the City and its Drinking Water Utility had no further need for four of the five McAllister Springs parcels (Parcels A [Tax Parcel No. 21819130101], C [Tax Parcel No. 21819430100], D [Tax Parcel No. 21819430200], and E [Tax Parcel No. 21819440200]); and

WHEREAS, the City of Olympia has continued need and use of Parcel B [Tax Parcel No. 21819310202] for the City’s main water supply line from the McAllister Wellfield to the City of Olympia and the City will retain said property for the City’s Drinking Water Utility; and

WHEREAS, the Olympia City Council on January 10, 2017, took action at a regularly scheduled public meeting to declare four of the McAllister Springs properties (Parcels A, C, D and E) as surplus to the needs of the City’s Drinking Water Utility and the City, a total of 177.2 acres, more or less; and

WHEREAS, assessed value of the four surplus parcels (Parcels A, C, D and E), together with the McAllister Springs pump house and other structures thereon is \$1,109,450; and

WHEREAS, the cost to the City’s Drinking Water Utility ratepayers to maintain the four surplus McAllister Springs parcels is high and will increase over time as facilities age and need repair, with ongoing costs for taxes, insurance, fire protection, and site maintenance of \$25,000 to \$30,000 per year, in addition to known facility repair costs exceeding \$145,000, and ongoing legal liabilities connected with ownership of the McAllister Springs parcels, all of which costs are being borne by the City’s utility ratepayers although McAllister Springs is no longer used as the City’s drinking water source; and

WHEREAS, after implementation of some MOA elements and consideration of on-going costs incurred by the City’s Drinking Water Utility’s ratepayers to maintain the unused McAllister Springs properties, the City of Olympia and the Nisqually Indian Tribe have explored the Tribe’s interest and desire to amend the MOA to provide for the Nisqually Indian Tribe to become the owner of the four parcels of surplus real property, totaling

177.2 acres, more or less, subject to perpetual conservation covenants and use restrictions benefitting the City of Olympia; and

WHEREAS, the City of Olympia and the Nisqually Indian Tribe desire to change the disposition and plan for ownership of the McAllister Springs properties but do not intend to change any other provisions of the MOA; and

WHEREAS, the Nisqually Indian Tribe has offered to relieve the City's Drinking Water Utility ratepayers from the City's ongoing costs and financial burdens connected with the ownership of the four McAllister Springs parcels (Parcels A, C, D and E) and have agreed to accept the City's terms and conditions upon taking ownership of the property, including all maintenance and liabilities, including thirteen (13) restrictive covenants upon transfer of the McAllister Springs parcels prohibiting development and to environmentally protect the City's surplus properties except for structures associated with ceremonial, cultural, fisheries, environmental or maintenance purposes, which restrictive covenants will run with the land in perpetuity to preserve the McAllister Springs properties; and

WHEREAS, the Nisqually Indian Tribe has also agreed to additional compensation by way of granting the City of Olympia a perpetual, exclusive Easement Agreement for the purpose of maintaining, inspection, construction, repair, replacement, preservation and protection and operation of a water well, well house, well pumps, electrical or other power source related thereto, water lines emanating therefrom, fire suppression water lines and fire hydrant associated therewith, on, over, in, under and across the Burdened Property consisting of portions of the surplus McAllister Springs parcels, together with a vehicular and pedestrian access easement as necessary to service and maintain the foregoing; and

WHEREAS, the Nisqually Indian Tribe has also agreed to additional further compensation by way of a non-exclusive easement to the City for vehicular and pedestrian ingress and egress to the Burdened Property consisting of portions of the surplus McAllister Springs parcels, upon reasonable prior notice to the Nisqually Tribe, for education and scientific purposes, said access to be coordinated to avoid conflicts with events by the Nisqually Indian Tribe, such easements granted by the Tribe to the City enforceable in either Thurston County Superior Court or the United States District Court for the Western District of Washington at Tacoma, as provided by the Tribe's voluntary agreement and limited waiver of its sovereign immunity;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE as follows:

1. That the foregoing Recitals are hereby adopted and approved as Findings of Fact by the Olympia City Council, including but not limited to the fair market value of the McAllister Springs surplus properties; the consideration paid by the Nisqually Indian Tribe consisting of the relief from financial burden upon the City's Drinking Water Utility ratepayers; the City's necessary easements for maintenance purposes for the City's water utility and for the City's use of said properties for education and scientific purposes; together with thirteen (13) restrictive covenants on the Nisqually Indian

Tribe's use of the City's McAllister Springs surplus properties to environmentally protect said properties in perpetuity.

2. That the disposition and conveyance of the McAllister Springs properties (Parcels A, C, D and E) to the Nisqually Indian Tribe is consistent with the 2008 Memorandum of Agreement entered into between the City of Olympia and the Nisqually Indian Tribe and is in furtherance of the terms of that Agreement. Also, the Olympia City Council concludes that said conveyance to the Tribe is in the best public interest to relieve the City's Drinking Water Utility's ratepayers from the burden of ongoing costs and expense, while also environmentally protecting the McAllister Springs properties as provided in the 2008 Memorandum of Agreement between the City of Olympia and the Nisqually Indian Tribe.
3. The Mayor and City Manager are directed and authorized to execute any and all documents necessary on behalf of the City of Olympia to convey McAllister Springs Parcels A, C, D and E, to the Nisqually Indian Tribe, subject to the Tribe's acceptance of the terms and conditions set forth in the documents of conveyance, easements and amendment to the MOA.

PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of January 2017.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

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 8th 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 4th Avenue East
PO Box 1967
Olympia, WA 98507-1967

With a required copy to: City Attorney
City of Olympia
601 4th 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 $1^{\circ}58'24''$ 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**;

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

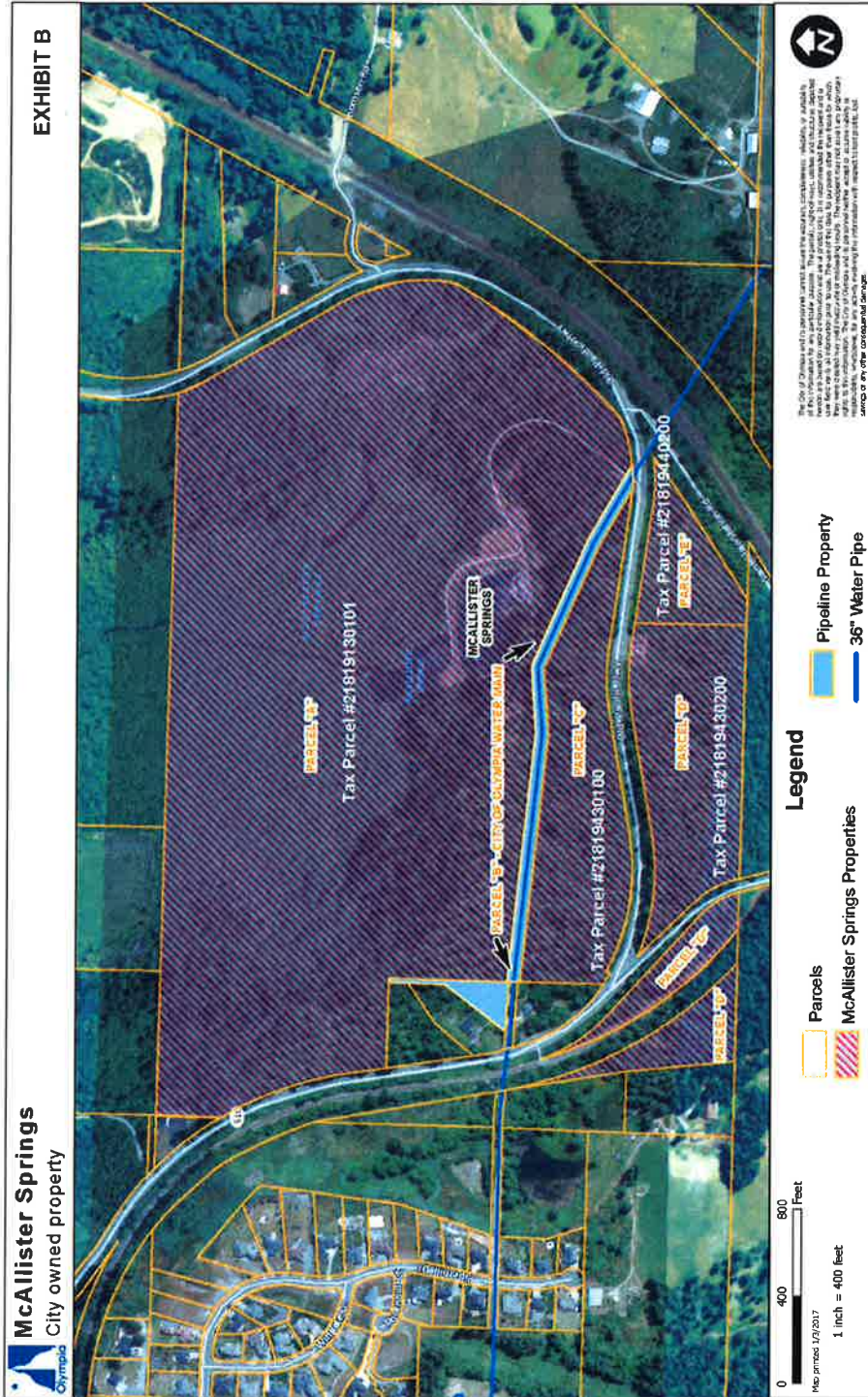


EXHIBIT C
Form of Deed

AFTER RECORDING MAIL TO:

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

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

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;
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

with any Washington State Department of Ecology McAllister Wellfield mitigation requirements; and

13. To sell, divest, convey or transfer the property to any entity with the exception of transfer or conveyance into trust with the United States government for the benefit of the Grantee.

It is the express intent of the Grantor and Grantee that the provisions of the Restrictive Covenants stated herein shall be deemed to run with the land and shall pass to and be binding upon Grantee’s successors in title, including any subsequent purchaser, grantee, owner, assignee, trustee, trustor, or lessee of any portion of the Property and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, owner, assignee, trustee, trustor, or lessee of any portion of the Property and any other person or entity having any right, title or interest therein.

GRANTOR:

CITY OF OLYMPIA, a Washington municipal corporation

By: _____
Cheryl Selby, Mayor

By: _____
Steven R. Hall, City Manager

Approved as to form:

By: _____
Mark Barber, City 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 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 _____

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 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°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**;

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 D

Form of Easement Agreement

AFTER RECORDING MAIL TO:

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

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 4th 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 4th 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 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

EXHIBIT B

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

EXHIBIT B

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,

EXHIBIT B

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)

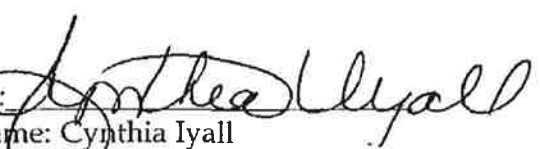
30. Termination. Either Party may terminate this Agreement if the Parties are unable to submit a final Mitigation Plan to Ecology as required in Paragraph 3(e).

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

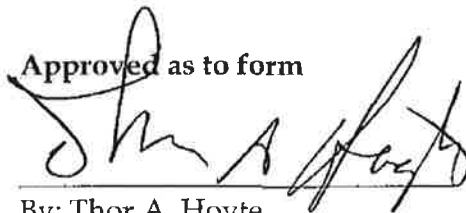
Approved as to form

By: Thor A. Hoyte
Title: Tribal Attorney

EXHIBIT B

Acknowledgements

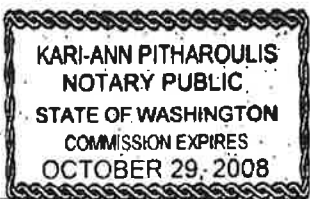
STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

This instrument was acknowledged before me on the 14th 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 14th 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

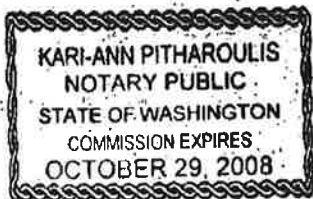




EXHIBIT A
EXHIBIT Nisqually Indian Tribe
4820 She-Nah-Num Drive S.E.
Olympia, Washington 98513
Phone: (360) 456-5221

NISQUALLY TRIBAL COUNCIL
RESOLUTION NO. D-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 13th day of May 2008.



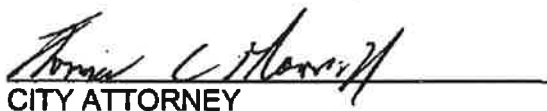
MAYOR

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

Page 2

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

Page 5

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

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

LANDLORD:

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

By: _____
Name: _____
Its: _____

TENANT:

NISQUALLY INDIAN TRIBE, a federally
recognized Indian tribe

By: _____
Name: _____
Its: _____

EXHIBIT B

Exhibit C to Memorandum of Agreement

Page 6

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
Page 7

EXHIBIT A

MOA

EXHIBIT B

Exhibit C to Memorandum of Agreement
Page 8

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)

DOCUMENT TITLE(S) (or transactions contained therein): Quitclaim Deed
REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED: <input type="checkbox"/> Additional reference #s on page _____ of document(s)
GRANTOR(S) (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
GRANTEE(S) (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
LEGAL DESCRIPTION (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
ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER [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

Page 5

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

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

(c) Step Three – Litigation and Other Remedies. Unless otherwise agreed by the Parties in writing, Step One and Step Two must be exhausted as a condition precedent to filing of any action in Thurston County Superior Court or the Federal District Court for the Western District of Washington in Tacoma or exercising any of the other remedies described in this Section 8(c). A Party may initiate an action and/or exercise the remedy described below at clause (2) without exhausting Steps One or Two if the statute of limitations is about to expire and the Parties cannot reach a tolling agreement, or if either Party determines the public health, safety, or welfare is threatened. In the event of a default by the Nisqually Tribe, the Burdened Property owner may also exercise some or all of the following remedies (in addition to filing an action, as described above): (1) terminate this Agreement and all rights of the Nisqually Tribe hereunder, which termination shall take effect 180 days after written notice to the Nisqually Tribe, and recover from the Nisqually Tribe any damages caused by the Nisqually Tribe’s breach; or (2) if the default is a failure by the Nisqually Tribe to perform the Mitigation Measures under the MOA and the Burdened Property owner receives an order or directive from the Washington State Department of Ecology, or its successor or a court of competent jurisdiction, that restricts the Burdened Property owner’s ability to exercise its Wellfield Water Rights (as defined in the MOA) because of the failure of such Mitigation Measures, the Burdened Property owner may require that such restrictions be applied to or enforced against the Pumping Facility (i.e., to limit the holder of the Water Allocation’s exercise of its Water Allocation), such that the City may continue to exercise fully its Wellfield Water Rights without limitation or restriction by such order or directive. Following any termination of this Agreement, the Burdened Property owner may record a memorandum of such termination without the joinder of the Nisqually Tribe, or, at the request of the Burdened Property owner, the Nisqually Tribe shall execute a recordable memorandum of such termination within ten (10) days following a written request from the owner of the Burdened Property. All rights, options and remedies of the Burdened Property owner contained in this Agreement shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and the Burdened Property owner shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or by any other agreement to which the Burdened Property owner and the Nisqually Tribe are parties, whether or not stated in this Agreement.

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

Page 11

EXHIBIT C

Legal Description of the Easement

EXHIBIT B

Exhibit G

Final Decisions Regarding Wellfield Water Rights
[to be attached]

EXHIBIT C
Form of Deed

AFTER RECORDING MAIL TO:

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

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

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;

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 with any Washington State Department of Ecology McAllister Wellfield mitigation requirements; and

13. To sell, divest, convey or transfer the property to any entity with the exception of transfer or conveyance into trust with the United States government for the benefit of the Grantee.

It is the express intent of the Grantor and Grantee that the provisions of the Restrictive Covenants stated herein shall be deemed to run with the land and shall pass to and be binding upon Grantee's successors in title, including any subsequent purchaser, grantee, owner, assignee, trustee, trustor, or lessee of any portion of the Property and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, owner, assignee, trustee, trustor, or lessee of any portion of the Property and any other person or entity having any right, title or interest therein.

GRANTOR:

CITY OF OLYMPIA, a Washington municipal corporation

By: _____
Cheryl Selby, Mayor

By: _____
Steven R. Hall, City Manager

Approved as to form:

By: _____
Mark Barber, City 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 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 _____

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 Return to:

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

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:

AGREEMENT

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 4th 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 4th 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°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.

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.

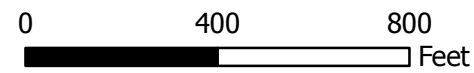
EXHIBIT B

2008 Memorandum of Agreement



McAllister Springs



City owned property





Map printed 1/3/2017

1 inch = 400 feet

Legend

-  Parcels
-  McAllister Springs Properties

-  Pipeline Property
-  36" Water Pipe

The City of Olympia and its personnel cannot assure the accuracy, completeness, reliability, or suitability of this information for any particular purpose. The parcels, right-of-ways, utilities and structures depicted hereon are based on record information and aerial photos only. It is recommended the recipient and or user field verify all information prior to use. The use of this data for purposes other than those for which they were created may yield inaccurate or misleading results. The recipient may not assert any proprietary rights to this information. The City of Olympia and its personnel neither accept or assume liability or responsibility, whatsoever, for any activity involving this information with respect to lost profits, lost savings or any other consequential damages.





City Council

Approval of a Resolution to Adopt the First Amendment of Memorandum of Agreement between the City of Olympia and the Nisqually Indian Tribe

Agenda Date: 1/24/2017
Agenda Item Number: 6.A
File Number: 17-0068

Type: resolution **Version:** 1 **Status:** Other Business

Title

Approval of a Resolution to Adopt the First Amendment of Memorandum of Agreement between the City of Olympia and the Nisqually Indian Tribe

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to Approve Resolution to Adopt the First Amendment of Memorandum of Agreement between the City of Olympia and the Nisqually Indian Tribe and authorize the Mayor and City Manager to sign the First Amendment

Report

Issue:

Whether to Approve a Resolution adopting the First Amendment of the Memorandum of Agreement

Staff Contact:

Rich Hoey, P.E., Public Works Director, 360.753.8495

Presenter(s):

Rich Hoey, P.E., Public Works Director

Background and Analysis:

In May 2008, the City and Tribe entered into a historic agreement to jointly develop the McAllister Wellfield, and to permanently protect McAllister Springs. The agreement called for the City to retain ownership of the McAllister Springs properties, and for the City and Tribe to work together on access and a plan for long-term use for the properties.

The McAllister Springs properties total about 181 acres. The properties include the headwaters of

McAllister (Medicine) Creek and are important historically and culturally to the Nisqually Tribe. There are a total of five City-owned parcels (parcels A-E) within the McAllister Springs complex.

Since the move to the McAllister Wellfield, the majority of the McAllister Springs properties (all but Parcel B) no longer have any direct use for the Drinking Water Utility. Parcel B includes the main water transmission line from the McAllister Wellfield and remains vital for the City's Drinking Water Utility. Parcel B will be retained by the City.

The cost to maintain all of the McAllister Springs properties is high and will increase over time as facilities age and need repair. Ongoing costs for taxes, insurance, fire protection, and site maintenance are \$25,000 to \$30,000 per year. In addition, known facility repair costs exceed \$145,000 and are increasing. The City also has legal liabilities connected with its ownership of the properties. These costs are currently being borne by the City's utility rate payers, although McAllister Springs is no longer used as the City's drinking water source.

On January 10, 2017, the City Council took action at a regularly scheduled public meeting to declare the McAllister Springs and Abbott Springs properties (jointly referred to as "McAllister Springs") as surplus to the needs of the drinking water utility and the City.

While the original historic 2008 Memorandum of Agreement with the Nisqually Indian Tribe called on the City to retain ownership of the McAllister Springs properties, the Tribe has expressed a willingness to take over ownership of the properties along with all maintenance costs. The Tribe has also expressed a willingness to ensure permanent protection of the property, and to provide periodic access to the City for environmental educational purposes.

Staff recommends that Council adopt a resolution to approve the First Amendment to the Memorandum of Agreement between the City and Nisqually Tribe (see attached) that provides that the plan for ownership of McAllister Springs be changed to convey ownership of a portion of McAllister Springs, consisting of approximately 177.2 acres, more or less, as is, to the Nisqually Tribe and the City retain rights to access and use the McAllister Springs properties for educational and scientific purposes. Also that the McAllister Springs properties remain in a state of perpetual conservation and that the name of the properties known as McAllister Springs and Abbott Springs should be officially changed to their Nisqually name and the parties agree to support efforts to rename the springs by its native Nisqually name. The remainder of the historic Memorandum of Agreement between the parties shall remain unchanged or amended, other than as provided in the First Amendment to the Memorandum of Agreement, except as the parties may so mutually provide in the future by written amendment.

Neighborhood/Community Interests (if known):

The City no longer uses McAllister Springs as a water supply, yet maintenance of the buildings and grounds is currently being borne by the City's water utility rate payers. Over the years, many residents and school groups have toured McAllister Springs for environmental education purposes. There is interest in maintaining access to the property for this type of environmental education which the First Amendment to the Memorandum of Agreement does provide.

Options:

1. Approve the Resolution to adopt the First Amendment to the Memorandum of Agreement and

to authorize the Mayor and City Manager to execute such First Amendment on behalf of the City of Olympia.

2. Do not approve the Resolution to adopt the First Amendment to the Memorandum of Agreement.

Financial Impact:

The Drinking Water Utility currently bears the costs of maintaining the McAllister Springs property and facilities.

Attachments:

1. Resolution
2. First Amendment of Memorandum of Agreement Between the City and Tribe
3. Map of McAllister Springs Properties

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, APPROVING AND ADOPTING THE FIRST AMENDMENT TO THE MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF OLYMPIA AND THE NISQUALLY INDIAN TRIBE, AND AUTHORIZING THE MAYOR AND CITY MANAGER TO SIGN THE FIRST AMENDMENT ON BEHALF OF THE CITY.

WHEREAS, the City of Olympia 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, 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, on May 14, 2008, the City of Olympia and the Nisqually Indian Tribe entered into a Memorandum of Agreement (hereafter "MOA") that provided a framework and terms and conditions for cooperative work on the shared issues of water supply and water resources stewardship; and

WHEREAS, the City of Olympia owns real property in Thurston County, Washington, in an area known as McAllister Springs that historically served as a water supply source before the City of Olympia developed and commenced the use of the McAllister Wellfield; and

WHEREAS, the City of Olympia holds fee simple ownership of the McAllister Springs properties, consisting of five parcels of land totaling approximately 181.5 acres, more or less; and

WHEREAS, the MOA provided for the City of Olympia to retain ownership of the McAllister Springs and Abbott Springs properties (hereafter jointly referred to as "McAllister Springs") and negotiate a long term agreement for conservation status and use by the Nisqually Indian Tribe; and

WHEREAS, the Olympia City Council on January 10, 2017, took action at a regularly scheduled public meeting to declare the McAllister Springs properties as surplus to the needs of the City's 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's ratepayers to maintain the McAllister Springs properties, the City of Olympia and the Nisqually Indian Tribe now desire to amend the MOA to provide for the Nisqually Indian Tribe to become the owner of four parcels of

real property, all within the McAllister Springs properties totaling 177.2 acres, more or less, subject to perpetual conservation covenants and use restrictions benefitting the City of Olympia; and

WHEREAS, the City of Olympia and the Nisqually Indian Tribe intend to change the disposition and plan for ownership of the McAllister Springs properties but do not intend to change any other provisions of the MOA and the parties agree to delete Section 14 of the MOA in its entirety and to replace the provisions with the First Amendment to the MOA, with no other terms or provisions of the MOA amended and all other provisions of the MOA remaining in full force and effect;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE as follows:

1. The First Amendment to the Memorandum of Agreement between the City of Olympia and the Nisqually Indian Tribe is hereby adopted and approved.
2. The Mayor and City Manager are directed and authorized to execute the First Amendment to the Memorandum of Agreement on behalf of the City of Olympia.

PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of January 2017.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

**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 8th 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 4th Avenue East
PO Box 1967
Olympia, WA 98507-1967

With a required copy to: City Attorney
City of Olympia
601 4th 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

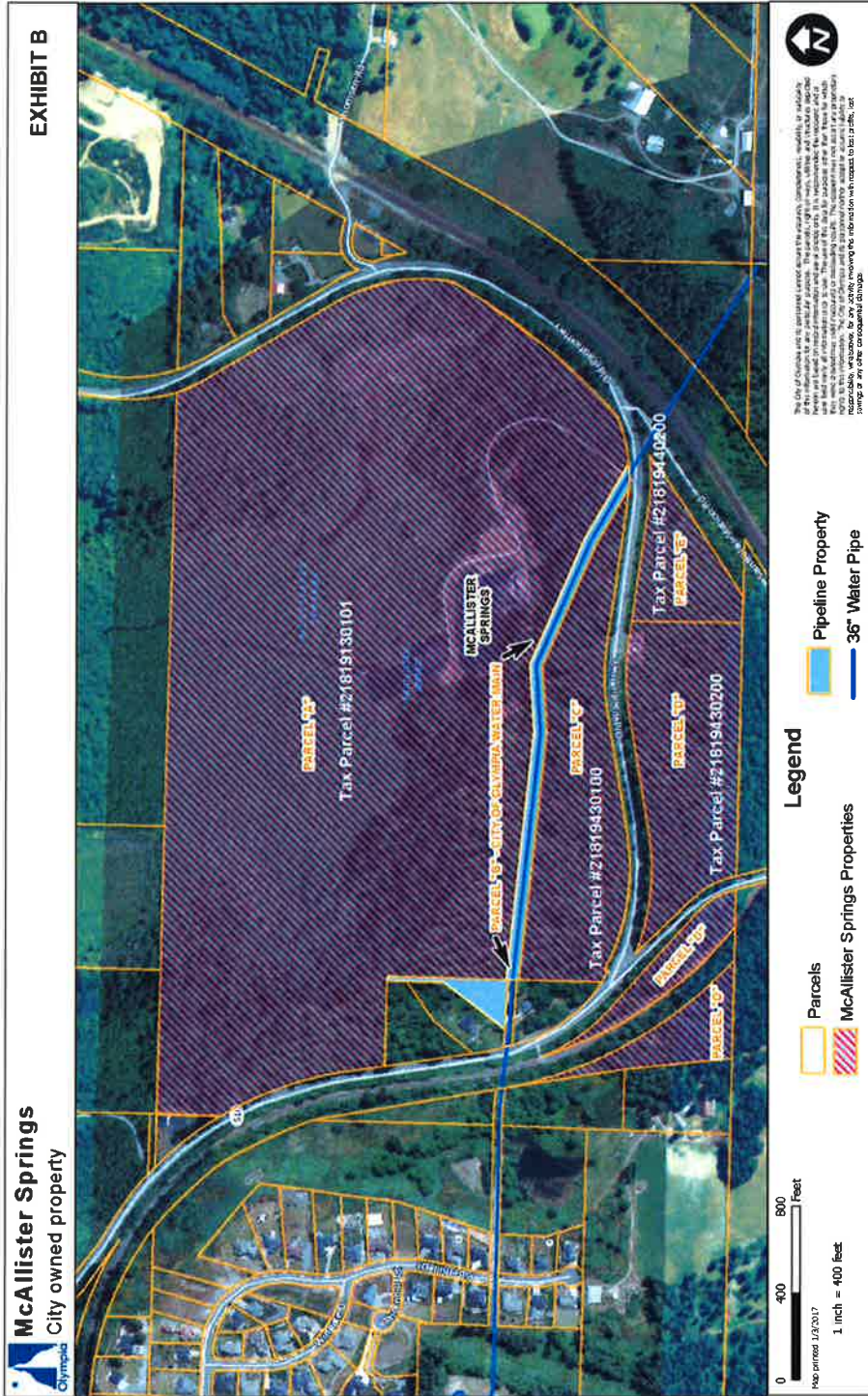


EXHIBIT C
Form of Deed

AFTER RECORDING MAIL TO:

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

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

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

with any Washington State Department of Ecology McAllister Wellfield mitigation requirements.

13. To sell, divest, convey or transfer the property to any entity with the exception of transfer or conveyance into trust with the United States government for the benefit of the Grantee.

It is the express intent of the Grantor and Grantee that the provisions of the Restrictive Covenants stated herein shall be deemed to run with the land and shall pass to and be binding upon Grantee's successors in title, including any subsequent purchaser, grantee, owner, assignee, trustee, trustor, or lessee of any portion of the Property and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, owner, assignee, trustee, trustor, or lessee of any portion of the Property and any other person or entity having any right, title or interest therein.

GRANTOR:

CITY OF OLYMPIA, a Washington municipal corporation

By: _____
Cheryl Selby, Mayor

By: _____
Steven R. Hall, City Manager

Approved as to form:

By: _____
Mark Barber, City 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 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

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

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 4th 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 4th 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

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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

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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

EXHIBIT B

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.

EXHIBIT B

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

EXHIBIT B

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

EXHIBIT B

(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

EXHIBIT B

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,

EXHIBIT B

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)

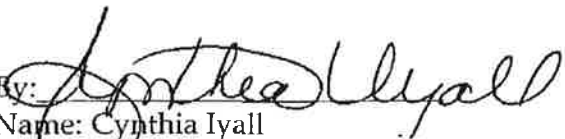
30. Termination. Either Party may terminate this Agreement if the Parties are unable to submit a final Mitigation Plan to Ecology as required in Paragraph 3(e).

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

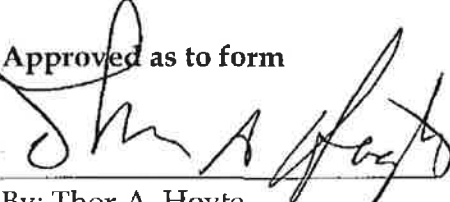

By: Thor A. Hoyte
Title: Tribal Attorney

EXHIBIT B

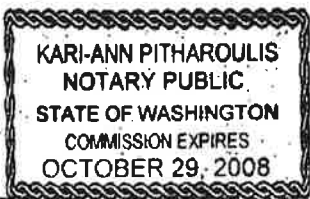
Acknowledgements

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

This instrument was acknowledged before me on the 14th 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 14th 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

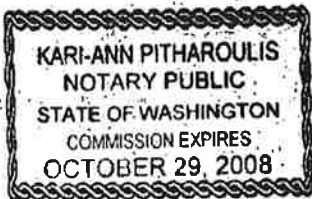




EXHIBIT A
EXHIBIT Nisqually Indian Tribe
4820 She-Nah-Num Drive S.E.
Olympia, Washington 98513
Phone: (360) 456-5221

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 13th 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

Page 4

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

Page 5

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

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

LANDLORD:

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

By: _____
Name: _____
Its: _____

TENANT:

NISQUALLY INDIAN TRIBE, a federally
recognized Indian tribe

By: _____
Name: _____
Its: _____

EXHIBIT B

Exhibit C to Memorandum of Agreement

Page 6

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)

DOCUMENT TITLE(S) (or transactions contained therein): Quitclaim Deed
REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED: <input type="checkbox"/> Additional reference #s on page _____ of document(s)
GRANTOR(S) (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
GRANTEE(S) (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
LEGAL DESCRIPTION (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
ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER [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

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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

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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

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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

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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

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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.

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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

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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__.

[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: _____

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EXHIBIT A

Legal Description of the Burdened Property

EXHIBIT B

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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

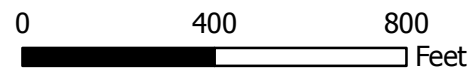
Exhibit G

Final Decisions Regarding Wellfield Water Rights
[to be attached]



McAllister Springs



City owned property





Map printed 1/3/2017

1 inch = 400 feet

Legend

-  Parcels
-  McAllister Springs Properties

-  Pipeline Property
-  36" Water Pipe

The City of Olympia and its personnel cannot assure the accuracy, completeness, reliability, or suitability of this information for any particular purpose. The parcels, right-of-ways, utilities and structures depicted hereon are based on record information and aerial photos only. It is recommended the recipient and or user field verify all information prior to use. The use of this data for purposes other than those for which they were created may yield inaccurate or misleading results. The recipient may not assert any proprietary rights to this information. The City of Olympia and its personnel neither accept or assume liability or responsibility, whatsoever, for any activity involving this information with respect to lost profits, lost savings or any other consequential damages.

