

**AMENDMENT NO. 1 TO INTERLOCAL AGREEMENT BETWEEN THE CITIES OF
OLYMPIA, LACEY, AND YELM FOR IMPLEMENTING DESCHUTES WATER RIGHTS
MITIGATION STRATEGY – PHASE V**

This INTERLOCAL AGREEMENT AMENDMENT is made and entered into between the **CITIES OF OLYMPIA, LACEY, AND YELM**, municipal corporations, (“**THE CITIES**”).

The Cities wish to amend the Interlocal Agreement executed on September 12, 2017 to clarify that Phase V work to be accomplished under that Interlocal Agreement, which includes contracting for construction services of habitat restoration mitigation projects, construction project management, riparian and wetland area planting and maintenance, and property management activities, is ongoing and need not have been and need not be accomplished by 2020, or any other particular date.

Now, therefore, in consideration of the mutual benefits and covenants contained herein, the Cities agree that the Interlocal Agreement executed on September 12, 2017, is amended as follows:

1. Section II **Scope of Agreement/Work** is amended to read:

II. Scope of Agreement/Work

City of Yelm

The City of Yelm will not be a party to the construction, monitoring and management of the habitat restoration mitigation actions described in this Agreement. However, Yelm agrees to reimburse Lacey and Olympia for its pro-rata share of the construction, monitoring and management costs as described in Sections IV and V of this Agreement if mitigation credit for these habitat restoration mitigation actions is allowed in the future.

As a joint landowner, the City of Yelm agrees to participate in property management and stewardship planning expenses as described in Section IV.c of this Agreement. The City of Yelm agrees that the Cities of Olympia and Lacey will jointly select a consultant, organization, or agency to conduct property management and stewardship activities and enter into a professional service agreement with the selected consultant, organization or agency as described in Section II of this Agreement and that such consultant, organization, or agency selected may perform other habitat restoration mitigation activities for which the City of Yelm has not yet agreed to cost-share.

As a joint landowner, the City of Yelm agrees to coordinate with the Cities of Olympia and Lacey on future long term management and stewardship decisions for the Deschutes River property through involvement in a separate agreement following the

completion of the habitat restoration mitigation construction work jointly carried out by the Cities of Olympia and Lacey.

The City of Yelm acknowledges that the City of Olympia managed planting of the 50-foot riparian buffer, including payment of all costs, for the mutual benefit of the Cities and agrees to participate in cost sharing of this expense as described in sections IV and V of this Agreement.

The Cities of Olympia and Lacey

The Cities of Olympia and Lacey will jointly install, construct and monitor habitat restoration mitigation actions as a condition of their water rights.

This Agreement provides authority for the City Managers of the Cities of Olympia and Lacey to enter into the necessary agreements to accomplish all tasks necessary for completion of Phase V work. Specific Phase V work to be accomplished under this agreement includes contracting for construction services of habitat restoration mitigation projects, construction project management, riparian and wetland area planting and maintenance ~~through 2020~~ and property management activities ~~through 2020~~.

The Cities of Olympia and Lacey agree to jointly engage the services of one or more consultants, contractors, organizations, or agencies to assist the Cities in services related to implementation of the Deschutes Mitigation strategy as approved by WDOE.

The Cities of Olympia and Lacey will jointly enter into a professional services agreement with one or more consultants, organizations, or agencies agreed upon by the parties for Phase V development and implementation. Work to be included under a professional services agreement may include construction and inspection of restoration projects, riparian monitoring and maintenance, project management, permitting assistance, property management activities, and legal analysis and review services.

The Cities of Olympia and Lacey will jointly enter into a construction contract with one or more contractor agreed upon by the parties for Phase V construction of habitat restoration mitigation projects, and riparian buffer and wetland planting, as needed.

The Cities of Olympia and Lacey will jointly direct the work of contractors, consultants, organizations, or agencies through a consensus-based decision making process. Firms providing professional services will be chosen through the standard selection process for professional services as required by the laws of the State of Washington and the Cities of Olympia and Lacey will jointly develop and issue the Request for Qualifications (RFQ), including the general scope and nature of the project or work, when required by law for contracted work and will make a unified recommendation for selection of the

firm. Construction contracts shall be awarded to the lowest, responsive, qualified bidder.

The selection process for professional services shall include one or more project managers or engineers familiar with the municipal public work construction process. In addition to other criteria as may be agreed to by the Cities of Olympia and Lacey, consultants shall be evaluated on their ability to provide municipal construction support which may include but not be limited to bid award support, inspections, documentation, project management, and submittal review. Once the consultants are selected, the Cities of Olympia and Lacey shall coordinate with the selected consultant(s) to develop any final Scope of Work and Professional Services Agreements amenable to each Party.

In recognition that one City will need to approve change orders, make payments, and keep track of insurance, bond and other legal requirements, the firm that is hired will be instructed to use Olympia's project specifications with the Olympia City Engineer or designee as the approver of change orders, pay estimates and related construction decisions.

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

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

The Cities of Olympia, Lacey and Yelm

Within 30 days of receiving approval of a water right, with no appeals filed, from WDOE, conditioned with mitigation provisions, the City of Yelm will inform the Cities of Olympia and Lacey in writing of its desire to participate in construction and monitoring of habitat restoration mitigation activities at the Deschutes River property, including costs. Following receipt of such notice, the Cities of Olympia and Lacey will coordinate project decisions and activities with the City of Yelm consistent with section II of this Agreement, provided that if a construction and/or professional services contract is in place, such a contract(s) will not be amended to include the City of Yelm.

As joint land owners, the Cities of Olympia, Lacey and Yelm agree to share in property management and stewardship planning expenses as described in Section IV.c of this Agreement. The City of Yelm agrees that the Cities of Olympia and Lacey will jointly select a consultant, organization, or agency to conduct property management and stewardship activities and enter into a professional service agreement with the selected consultant, organization or agency as described in Section II of this Agreement and that

such consultant, organization, or agency selected may perform other habitat restoration mitigation work for which the City of Yelm has not yet agreed to cost-share. The Cities of Olympia and Lacey agree that any final Scope of Work for professional services shall separate tasks and budgets for property management and stewardship activities from any other tasks to be accomplished under the professional services agreement.

The Cities of Olympia, Lacey and Yelm will accomplish future long term management and stewardship (e.g. land conservancy trust) of the property through a separate agreement after habitat restoration construction work is completed.

2. Section IV(c) **Property Management Expenses** is hereby amended as follows:

IV. Cost Sharing

c. Property Management Expenses.

The Cities of Olympia, Lacey and Yelm agree to equally divide costs for property management expenses. Property management work ~~may~~could include the removal of material (ie TV's, tires) and fences from the property, weed control, installation of new wire fencing, and pasture management ~~through 2020~~. Prior to authorizing material or fence removal or fence construction, the Cities of Olympia and Lacey agree to consult with the City of Yelm. Total costs for such services under this agreement are not to exceed \$133,997 as outlined as follows.

Stewardship Planning	\$73,308
Pasture Management	\$60,688

3. Except as expressly provided in this Amendment to the Interlocal Agreement, all other terms and conditions of the original Interlocal Agreement remain in full force and effect.

4. This amendment may be executed in any number of counterparts, each of which when executed and delivered constitutes a duplicate original, but all counterparts together constitute a single agreement.

CITY OF OLYMPIA

Steven J. Burney, City Manager

Date: _____

Approved as to Form:

Michael M. Young
Deputy City Attorney

CITY OF LACEY

Scott Spence, City Manager

Date: _____

Approved as to Form:

Dave Schneider

City Attorney

CITY OF YELM

JW Foster, Mayor

Date: _____

Approved as to Form:

Attorney