

**MEMORANDUM OF AGREEMENT BETWEEN THE CITIES OF OLYMPIA,
LACEY, AND TUMWATER FOR TRANSFER OF ASSETS RELATED TO THE
BREWERY WELLFIELD**

This Memorandum of Agreement (MOA) is entered into in triplicate by and between the City of Olympia, a Washington non-charter code city, the City of Tumwater, a Washington non-charter code city, and the City of Lacey, a Washington non-charter code city. The three cities are Washington municipal corporations and are referred to herein collectively as the “Cities”.

RECITALS

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

WHEREAS, pursuant to RCW 39.34.080, each City 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 City to the contract and shall set forth its purposes, powers, rights, objectives and responsibilities of the contracting Cities; and

WHEREAS, the Cities each operate a water utility to provide water for municipal use and consumption for residential and nonresidential needs within their water service areas; and

WHEREAS, under a prior interlocal agreement signed in March 2006 the Cities jointly worked to condemn, purchase, and transfer to their joint ownership certain water rights, wells, water system appurtenances, and land formerly belonging to the Olympia Brewery (Currently Thurston County Tax Parcel Nos. 09470019001, 09470045001, and 09470003001), and in that interlocal agreement the Cities agreed to develop additional agreements to evaluate and develop a water supply at the site; and

WHEREAS, in 2009 the Cities successfully transferred 6,515 gallons per minute and 2,283.53 acre-feet per year of water rights formerly owned by the Olympia Brewery to their joint ownership, with each City having a right to one-third of the aggregate water rights instantaneous rate and annual volume, the water rights being held by the Cities jointly owned, which total 6,515 gallons per minute and 2,283.53 acre-feet per year. This amount of water right is the aggregate of transfers: THUR-08-02 (Ground Water Certificate (GWC) 785-D and Certificate of Change 621), THUR-08-03 (GWC 784-D and Certificate of Change 622), THUR-08-04 (GWC 34-A and Certificate of Change 620), THUR-08-05 (GWC 453-A and Certificate of Change 623), THUR-08-06 (GWC 4587-A), THUR-08-

07 (G2-01073C), THUR-08-08 (G2-01072C), THUR-08-09 (G2-20844C), and THUR-08-11 (G2-26058C). In addition to the water rights, the Cities also purchased, and jointly own, wells, water system appurtenances and land formerly owned by the Olympia Brewery; and

WHEREAS, each City owns an undivided one-third share of the Brewery Wellfield water rights, wells, water system appurtenances. This ownership includes not only assets, but also liabilities; and

WHEREAS, the Cities previously reached agreement to allow the City of Tumwater to construct a stormwater facility on one of the jointly owned parcels (Thurston County Parcel No. 09470003001) and decommission Well Nos. 16 and 17 as well as a valve vault. The Cities agreed that the City of Tumwater would decommission those wells at its own expense in exchange for the easement from the other Cities to construct the stormwater facility on the property; and

WHEREAS, it is the intention of the Cities that the Olympia Brewery water rights be used for municipal water supply to meet the needs of one or more of the Cities, within the Cities' water service areas, to the full extent of the water rights; and

WHEREAS, some Cities have identified future development scenarios through joint and independent planning efforts that outline more efficient and cost-effective water production alternatives than the use of the Olympia Brewery water rights; and

WHEREAS, the Cities intend to define and implement a process that allows for one partner to permanently transfer its Brewery Wellfield water rights and other related assets and liabilities to one or more of the Cities; and

WHEREAS, the Cities need to move forward and show due diligence on re-perfecting the water rights, consistent with the extended water right change authorization development schedule, which requires completion of construction by **April 1, 2041**, and full beneficial use for municipal supply of both the water rights' instantaneous rate and annual volume by **April 1, 2046**; and

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Cities agree as follows:

I. PURPOSE AND OBJECTIVE

The purpose and objective of this MOA is to set forth the process by which one or more of the Cities may transfer ownership interest, including water rights, land, wells, water system appurtenances, and associated liabilities, such as but not limited to, well decommissioning, to another City or Cities. The processes outlined herein shall be implemented following written notice by one City to transfer its interest to another City or Cities.

In addition, this MOA provides for reimbursement to the City of Tumwater for stormwater utility fees and consultant costs previously incurred for jointly held properties and management of the Brewery Wellfield project, as noted in Section II.

II. OUTSTANDING PAYMENTS

A. Stormwater Fee Payment on Jointly Owned Parcels

The City of Tumwater has paid the stormwater fees on behalf of the Cities on the jointly owned properties since October 2006. **Table 1** identifies the parcel, account number, and stormwater fees paid for the jointly owned parcels.

Table 1. City of Tumwater Paid Stormwater Fee Information on Jointly Owned Parcels (October 2006 through December 2022)

Parcel Number	Account Number	Stormwater Fees Paid
09470003001	80-104004-000	\$36,037.22
09470019001	80-104002-000	\$18,052.48
09470045001	80-104003-000	\$15,157.88
Combined Total		\$69,247.58
Each Cities' 1/3 Share		\$23,082.53

The City of Lacey and the City of Olympia agree to pay the City of Tumwater their respective one-third prorated share of the stormwater fees.

B. Consultant Fees

Since 2018, RH2 Engineering, Inc. has been assisting the Cities with development of language for an Interlocal Agreement and this MOA. The total authorized contract amount for this effort is \$57,000, of which the cost for each City is \$19,000. The City of Tumwater has paid RH2 Engineering, Inc. for these services under a service provider agreement.

The City of Lacey and the City of Olympia agree to pay the City of Tumwater their respective one-third share of the consultant fees.

C. Total Outstanding Payments

The City of Tumwater will send invoices to the City of Lacey and City of Olympia identifying their proportionate share of the stormwater fees and consultant fees following execution of this MOA.

The City of Lacey and the City of Olympia shall pay the City of Tumwater the outstanding stormwater and consultant fees no later than 60 days after full execution of this MOA, or after being invoiced, whichever is later.

Following the initial invoicing, the City of Tumwater shall routinely invoice each Partner City monthly for utility fees for the jointly owned properties, and no less than quarterly for any consultant fees related to the development of Brewery Wellfield partnership agreements. The cost will be proportional to each City's interest in the Brewery Wellfield at the time of invoice preparation.

III. TRANSFER OF OWNERSHIP BETWEEN CITIES

Section III and its associated subsections identify how assets may be transferred from one City to another City.

A. Intent to Transfer Ownership

If a City is interested in transferring its interest in the Brewery Wellfield water rights, other related assets and liabilities, it shall contact the other Cities and determine if there is an interested transferee. If interested parties have been identified the process of transferring ownership can proceed following written notice to the Cities. Objections to the transfer by a partner City must be received within 15 calendar days of receipt of the notice to transfer, noting reason for objection and potential remedy.

B. Water Right and Property Valuation

Two different entities will be used for arriving at the total valuation. One will be responsible for valuing the water rights and the second will be responsible for valuing the other related assets and liabilities.

The Cities agree to use WestWater Research LLC, who performed the original water right valuation for the condemnation proceedings, to provide a present-day value of the Brewery Wellfield water rights. If a suitable contract with WestWater Research LLC cannot be reached, the Cities must agree on another entity as carried out by the City Manager/Administrator or their delegates.

The Cities agree to use R.F. Duncan & Associates Inc., to provide a present-day value of the Brewery Wellfield properties, (currently Thurston County Tax Parcel Nos. 09470019001, 09470045001, and 09470003001), including any structures, wells, and water system appurtenances associated with the Olympia Brewery water rights occurring both on the jointly owned parcels and off. If a suitable contract with R.F. Duncan & Associates Inc., cannot be reached, the Cities must agree on another entity as carried out by the City Manager/Administrator or their delegates.

The net property valuation will consist of the following elements:

- Present-day value of the three jointly owned Thurston County tax parcels (09470019001, 09470045001, and 09470003001).
- Deduction for cost of decommissioning existing unused wells (both production and test). Due to the specialty nature of this work, this cost shall

be based on a current estimate provided by a well driller, licensed in the state of Washington, that is capable of performing the work. Estimated deduction of approximately \$1.50M.

- Deduction or credit for demolition and removal of the reservoir. Due to the specialty nature of this work, this cost shall be based on a current estimate provided by a contractor, licensed in the state of Washington, that is capable of performing the work. Estimated deduction of approximately \$1.27M.
- Deduction or credit for demolition and removal of existing well buildings and the valve house located near the reservoir. Due to the specialty nature of this work, this cost shall be based on a current estimate provided by a contractor, licensed in the state of Washington, that is capable of performing the work. Estimated deduction of approximately \$0.24M.
- Design, project management, and inspection costs for well, reservoir, and building demolition/decommissioning. Estimated deduction of \$0.05M.

Costs for the total valuation will be split evenly by the transferring Cities.

If either City involved in the transfer disputes the valuation provided for either the water right or property, the disputing City shall be solely responsible for paying for any additional valuation.

Any difference between the values used in the valuation and the actual cost of decommissioning, demolition, and removal will be proportionally assigned to the remaining Cities, whether beneficial or detrimental.

C. Mutual Agreement

Once the transferring Cities agree on the valuation, the transferor shall present the transferee with a “Right to Use in Perpetuity Certificate” of its increment of the Brewery Water Rights.

The transferor shall retain ownership of its increment of the Brewery water rights until such time as the transferee has re-perfected the use of that increment of water.

Payment for the Right to Use in Perpetuity Certificate shall be made by the transferee to the transferor within 90 days through a Transfer of Brewery Assets agreement prepared by the transferee.

Once the transferee holds the Right to Use in Perpetuity Certificate and payment has been made to the transferor, the transferee will immediately assume all of the transferor’s interest in the assets and liabilities and the transferor foregoes any future involvement in decision-making regarding redevelopment of the Brewery Wellfield or jointly held assets and liabilities. **Table 2** shows the breakdown in rights and responsibilities after payment is made.

Table 2. Example Rights and Responsibility Breakdown After Payment

City	Role	Percentage
City 1	Transferor	0
City 2	Transferee	2/3
City 3	Not Part of Transaction	1/3
Total		1

Once the transferee re-perfects the use of the transferor’s increment of water, as demonstrated through source metering data, the transferor shall provide the transferee with a Quit Claim Deed transferring ownership of the increment of water to the transferee.

IV. MISCELLANEOUS TERMS

A. Indemnification & Insurance

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

B. No Separate Entity Created

This Agreement creates no Joint Board and no separate legal entity.

C. Duration of Agreement

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

D. Dispute Resolution

a. Step One – Negotiation. In the event of a dispute concerning any matter pertaining to this Agreement, the Cities involved shall attempt to adjust their differences by informal negotiation. The City perceiving a dispute or disagreement persisting after informal attempts at resolution shall notify the other Cities 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 Cities to meet. The other Cities shall respond in writing within ten (10) business days. The response shall succinctly and directly set out that City’s view of the issues or state that there is no disagreement. The

Cities 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 City initiating dispute resolution. The representatives of the Cities 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 Cities which shall become an addendum to this Agreement. Each City 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 Cities 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 City may demand mediation. The mediator shall be chosen by agreement. Each City will bear the cost of its own attorneys, consultants, and other Step Two expenses. The Cities to the mediation will share the cost of the mediator. A successful mediation shall result in a memorandum agreement which shall become an addendum to this Agreement. Mediation under this provision shall not exceed 90 days. If the mediation is not successful within 90 days, the Cities may proceed to litigation.

c. Step Three – Litigation. Unless otherwise agreed by the Cities in writing, Step One and Step Two must be exhausted as a condition precedent to filing of any action in Thurston County Superior Court. A City may initiate an action without exhausting Steps One or Two if the statute of limitations is about to expire and the Cities cannot reach a tolling agreement, or if either City determines the public health, safety, or welfare is threatened.

E. Termination of Agreement

This Agreement may be terminated upon written mutual agreement of the Cities that hold an ownership interest in the water rights.

F. Interpretation and Venue

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

G. Entire Agreement

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

H. Recording

This Agreement shall be filed with the Thurston County Auditor's Office or posted upon the Cities' websites as provided by RCW 39.34.040.

I. Notice

Any notice required under this Agreement shall be to the Cities at the address listed below by United States Postal Service, First Class mail, postage prepaid, and shall become effective three days following the date of deposit with the United States Postal Service.

CITY OF OLYMPIA:

Attn: Rich Hoey, Public Works Director
PO Box 1967
Olympia, WA 98507-1967

CITY OF LACEY:

Attn: Peter Brooks, Water Resource Manager
P.O. Box 3400
Lacey, WA 98509-3400

CITY OF TUMWATER:

Attn: Dan Smith, Director of Water Resources and Sustainability
555 Israel Road SW
Tumwater, WA 98501

This MOA may be executed in counterpart and/or by electronically transmitted signature (.pdf or similar). This Agreement is hereby entered into between the Cities and shall take effect on the date of the last authorizing signature affixed hereto:

CITY OF OLYMPIA

CITY OF LACEY

Steven J. Burney, City Manager

Scott Spence, City Manager

Date: _____

Date: _____

Approved as to form:

Approved as to form:

Mark Barber, City Attorney

David Schneider, City Attorney

CITY OF TUMWATER

Debbie Sullivan, Mayor

Date: _____

Approved as to form:

Karen Kirkpatrick, City Attorney