

**AGREEMENT FOR TRANSFER OF INTERESTS IN BREWERY ASSETS
By and Between the City of Lacey and the City of Tumwater**

This Agreement for Transfer of Interests in Brewery Assets (the “Agreement”) is entered into by and between the City of Tumwater, a Washington municipal corporation (“Tumwater”) and the City of Lacey, a Washington municipal corporation (“Lacey”), (individually, “Party”, and collectively, “Parties”).

RECITALS

WHEREAS, the Parties each operate a water utility to provide water for municipal use within their service areas and wish to memorialize terms of cooperation in the responsible use of water resources in the best interests of the Parties and the region; and

WHEREAS, the City of Olympia filed a Petition in Eminent Domain in Thurston County Superior Court (Cause No. 06-2-00310-9) seeking to condemn real property at the former Olympia Brewery and water rights and associated assets; and

WHEREAS, an Interlocal Agreement by and between the City of Olympia, the City of Lacey and the City of Tumwater (“Cities”), effective March 16, 2006, states the Parties’ intent relative to acquisition of Brewery assets; identifies steps necessary to bring Tumwater and Lacey into the condemnation proceedings as petitioners; and sets forth terms for allocation of shared interests and costs; and

WHEREAS, the Cities submitted an application to the Department of Ecology (“Ecology”) on April 29, 2008, requesting changes to the water rights that are included in the Brewery assets held by the Cities and requesting approval of the Cities’ future joint use of water for municipal purposes within their service areas, which application was transferred by Ecology to the Thurston County Water Conservancy Board (“Board”) (Application No. 08-11) for review and to render a Record of Decision (“ROD”); and

WHEREAS, A Stipulation For and Judgment and Decree of Appropriation (“Decree”) was issued in the Olympia Brewery condemnation proceeding by Thurston County Superior Court Judge Tabor on December 19, 2008 and filed January 2, 2009, appropriating Brewery assets including condemned real property, associated property interests, and water rights, as described in the Decree; and stating that the water rights are “to be held by the Cities for beneficial use for municipal supply purposes in their water service areas as may be determined by action of the State of Washington or the Cities”; and

WHEREAS, in its ROD dated July 20, 2009, the Board approved transfers and changes to the Brewery water rights, subject to determinations as to validity and prospective conditions of use set forth in the ROD and approval by Ecology; the Board acknowledged

the Cities' efforts to establish a future plan for use of the water; and the Board set a schedule for putting water to full beneficial use by March 15, 2021; and

WHEREAS, Ecology approved the changes and transfer of Brewery water rights to the Cities in September 2009, and at the subsequent request of the Cities, Ecology granted an extension of the water rights development schedule by letter dated March 15, 2021, requiring full beneficial use of water under the water rights by April 1, 2041; and

WHEREAS, a Memorandum of Agreement Between the Cities of Olympia, Lacey, and Tumwater for Transfer of Assets Related to the Brewery Wellfield ("MOA"), effective February 3, 2023, provides that "each City owns an undivided one-third share of the Brewery Wellfield water rights, wells, water system appurtenances" and "this ownership includes not only assets, but liabilities"; and purpose of the 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 associate liabilities, ... to another City or Cities"; and

WHEREAS, by letter dated April 25, 2023 from Rick Walk, Interim City Manager of the City of Lacey, to John Doan, Tumwater City Administrator, Lacey affirmed that, pursuant to the requirements of Section III(A) of the MOA, Lacey had contacted the other Cities regarding their interest in acquiring that portion of Brewery assets that constitutes Lacey's undivided one-third share ("Transfer Assets") and that, in response, only Tumwater expressed interest in the Assets; and based on Tumwater's response, Lacey's letter stated Lacey's intent to transfer the Transfer Assets to Tumwater contingent upon "(1) the Parties of Tumwater and Lacey reaching agreement on the value of the assets; and (2) The Lacey City Council approving the transfer"; and

WHEREAS, no objections to the proposed transfer of Transfer Assets were received within the timeframe identified in III(A) of the MOA; and

WHEREAS, pursuant to Section III(B) of the MOA, the Parties engaged R.F. Duncan & Associates Inc to provide a present-day value of the Brewery Wellfield properties, including land, wells and water infrastructure and appurtenances, and the Parties engaged WestWater Research LLC to provide a present-day valuation of the Brewery water rights, which appraisals were used as the basis for Tumwater's offer to purchase the Transfer Assets; and

WHEREAS, the Parties seek to memorialize the terms of transfer of the Assets by Lacey to Tumwater in an agreement pursuant to the Interlocal Cooperation Act, RCW 39.34;

AGREEMENT

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

- 1. Transfer of Interests in Assets.** Lacey hereby agrees to transfer, assign and convey to Tumwater the exclusive right to the development and use of the Transfer Assets, including the right to use water up to the annual quantity of 761.18 acre-feet (“Water Rights”). Tumwater hereby agrees to accept said Transfer Assets together with all liabilities associated thereto. Section 4 of this Agreement constitutes a Right to Use in Perpetuity Certificate (“Certificate”), evidencing the transfer of the Transfer Assets to Tumwater, which Certificate is incorporated herein by reference and which constitutes the “certificate” as referenced in the MOA referenced above.
- 2. Consideration for Transfer.** In consideration for the transfer of the Transfer Assets to Tumwater, Tumwater agrees to make payment to Lacey in the amount of Two million, four hundred thousand, four hundred and sixty-one dollars (\$2,400,461.00). Said payment shall be made within 90 days of execution of this Agreement.
- 3. Assumption of Rights and Liabilities.** As provided in Section III(C) of the MOA, following execution of this Agreement transferring the Transfer Assets from Lacey to Tumwater, and upon payment by Tumwater in consideration for the transfer, Tumwater shall assume all rights to the Transfer Assets and all liabilities associated with the Transfer Assets; and Lacey is released from any liabilities and “foregoes any future involvement in decision-making regarding redevelopment of the Brewery Wellfield or jointly held assets and liabilities.”
- 4. Right to Use in Perpetuity Certificate.** This Section 4 of this Agreement constitutes the Right to Use in Perpetuity Certificate (“Certificate”), as referenced in Section III(C) of the MOA, which Certificate evidences the transfer of the Transfer Assets and associated liabilities to Tumwater.
- 5. Conditions of Use.** The Parties understand and agree that the Transfer Assets will be developed and put to use by Tumwater in a manner to be determined by Tumwater in its sole discretion; provided, that such use will be subject to the terms of this Agreement, the requirements applicable to the Parties generally as set forth in the MOA, applicable laws and regulations, and Tumwater’s agreement to put water to full beneficial use under the Water Rights (“Re-perfection”) on or before April 1, 2041.
- 6. Record-keeping and reporting.** Tumwater will maintain records of use of water under the Water Rights and shall, upon request, share that information with Lacey. Tumwater will be responsible for fulfilling all reporting requirements

relating to use and exercise of rights to the Transfer Assets as may be required by law or regulation or by agreements between the Parties or the Cities.

- 7. Quitclaim of Interests in Assets.** Lacey will retain ownership of the Transfer Assets until re-perfection of the Water Rights by full beneficial use of water under the Water Rights (“Re-perfection”), as required by Section III(C) of the MOA. On or before April 1, 2041, Tumwater will notify Lacey of Re-perfection by letter, with supporting documentation. Following receipt of Tumwater’s letter, Lacey will quitclaim its interest in the Transfer Assets to Tumwater. Following execution and delivery, the written instrument or instruments transferring title to the Assets will be filed with the Thurston County Auditor’s Office and additional notice provided as may be required by law.

8. Miscellaneous Terms.

A. Indemnification & Insurance

Each Party agrees to defend, indemnify and hold the other Party, its 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 Party’s performance of this Agreement, including injuries and damages caused by the negligence of the indemnifying Party’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.

D. Dispute Resolution

In the event that either Party is concerned that the performance of the other Party is not consistent with the terms of this Agreement, that Party shall promptly notify the other Party of its concerns, and the Parties shall make good faith efforts to address those concerns. If, in the opinion of either Party, additional steps are necessary to resolve the matter, the dispute resolution provisions of the MOA shall apply, which provisions are incorporated herein by reference.

E. Changes to the Agreement

Either Party may request changes to this Agreement; provided, that no change or addition to this Agreement shall be valid and binding upon either Party unless such change or addition is memorialized in a writing signed by both Parties. Any change so approved shall be attached to this Agreement and incorporated as an amendment herein.

F. Interpretation and Venue

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

G. Entire Agreement.

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

H. Public Notice

Following execution by the Parties, this Agreement will be filed with the Thurston County Auditor or listed by subject on a public agency's website or other electronically retrievable public source as provided by RCW 39.34.040.

I. Notice to the Parties

Any notice to the Parties required under this Agreement shall be to 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 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 electronically transmitted signature (.pdf or similar).

THIS AGREEMENT IS HEREBY ENTERED INTO by and between the Parties and shall take effect on the date of the last authorizing signature affixed hereto:

CITY OF LACEY

Rick Walk, City Manager

Date: _____

Approved as to form:

David Schneider, City Attorney

CITY OF TUMWATER

Debbie Sullivan, Mayor

Date: _____

Approved as to form:

Karen Kirkpatrick, City Attorney