

**CITY OF OLYMPIA
P.O. BOX 1967
OLYMPIA, WA 98507-1967**

Document Title(s) (or transactions contained therein): Interlocal Agreement providing allocation of water rights (former Olympia Brewery property currently owned by All-American Water Bottling Company) entered into by and between City of Olympia, City of Tumwater and City of Lacey 3/14/2006 (Olympia City File #12925)
Reference Number(s) of Documents assigned or released: (on page ___ of document(s))
Grantor 1. City of Olympia, WA 2. City of Tumwater, WA 3. City of Lacey, WA
Grantee(s) (Last name first, then first name and initials) 1. City of Olympia 2. City of Tumwater, WA 3. City of Lacey, WA
Legal Description (abbreviated: i.e. lot, block, plat or section, township, range) N/A Additional legal is on page _ of document.
Assessors Property Tax Parcel/Account Number N/A Additional legal is on page ___ of document.

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature of Requesting Party



CITY OF OLYMPIA

AGR

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03/16/2006 01 34P

Thurston Co. Wa.

INTERLOCAL AGREEMENT

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This Interlocal Agreement is entered into in triplicate by and between the City of Olympia, a Washington non-charter code city, the City of Tumwater, a Washington municipal corporation, and the City of Lacey, a non-charter code city. The three cities are Washington municipal corporations, and are referred to herein collectively as "the Parties."

RECITALS

- A. The Parties each operate a water utility to provide water for municipal use and consumption to residents and businesses within their water service areas.
- B. The Parties each need to obtain additional water supplies to serve the needs of projected population growth and new development within their water service areas and, as such, each city has been working to acquire new water supplies.
- C. The former Olympia Brewery property, currently owned by All-American Water Bottling Company, includes water right certificates totaling approximately 11.8 mgd instantaneous flow and 7,420 annual acre-feet ("Water Rights").
- D. The Parties have individually and collectively approached All-American Water Bottling Company seeking to purchase some or all of the water rights associated with the former Olympia Brewery property, but were informed that the water rights were not for sale.
- E. The City of Olympia has adopted Ordinance No.6394, and filed a Petition in Eminent Domain in Thurston County Superior Court Cause No. 06-2-00310-9 ("the Condemnation Proceeding"), seeking to condemn real property and water rights associated with the former Olympia Brewery.
- F. Olympia Ordinance No. 6394 authorizes the scope of the property subject to condemnation thereunder to be reduced.
- G. Although the City of Olympia's stated future water needs exceed the maximum amount of water available under the water right certificates associated with the former Olympia Brewery, Olympia recognizes that the cities of Tumwater and Lacey also have stated that they have water needs that collectively exceed the maximum amount of water available under the water right certificates, and that notwithstanding its own documented water needs, the City of Olympia is legally authorized to reduce the scope of its condemnation and/or provide water from other existing or future sources to help meet the water needs of Tumwater and Lacey.
- H. The Parties recognize and acknowledge that meeting their collective water needs cooperatively, as set forth below in this Interlocal Agreement, will assist each

jurisdiction in meeting its respective individual water needs, while also avoiding the uncertainty, delay, and expense associated with individual condemnation or other legal actions.

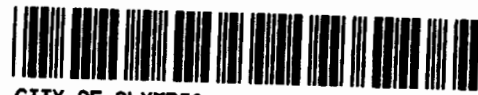
- I. The Parties recognize and acknowledge that water is a scarce public resource, and conserving and using it responsibly is in the best interest of each Party and the region.
- J. The Parties are authorized pursuant to RCW 39.34 to enter into interlocal agreements.

AGREEMENT

Section 1. Allocation of Water. Water will be allocated to Olympia, Tumwater, and Lacey on an equal basis with each city receiving one third of the total amount of water under the Water Rights that is determined to have been put to beneficial use and not relinquished and is available for transfer from commercial/industrial purposes to municipal purposes. Such allocation shall also take into consideration the nature of the right, quality of the water associated with a particular right, and the state of the infrastructure associated with the right. The Parties shall accomplish the foregoing allocation by distributing ownership of the Water Rights obtained through the Condemnation Proceeding, or by such other mechanisms as the Parties shall mutually agree upon. The Parties may subsequently agree to a different allocation which will be formally acknowledged by written agreement.

Section 2. Allocation of Costs. The following will be considered shared costs by the Parties to be borne equally, arising out of or related to the Condemnation Proceeding:

- a. attorney fees associated with shared work performed by outside counsel for the benefit of the Parties (but not including any attorney fees awarded under Section 8, herein);



- b. costs (including without limitation the cost of water quality and quantity tests, appraisers, water right valuers, hydrologists, and other consultants and expert witnesses).
- c. just compensation to be paid for water rights/real property obtained;
- d. the cost of obtaining confirmation of validity and approval of transfer and change of use of said water rights and any associated administrative proceedings.

Payment of costs will be pursuant to invoice. Each party will be provided with a copy of the invoice that reflects the date services were rendered and the amount charged for such services. The Parties will enter into a subsequent agreement for joint representation and the retention of outside counsel, appraisers, water right valuers, hydrologists, consultants and other expert witnesses.

Section 3. Public Use and Necessity. In consideration for the allocation set forth in Section 1 above, the Parties hereby stipulate and agree to public use and necessity as pled in the Petition in Eminent Domain on file in the Condemnation Proceeding and stipulate that all three cities will be putting the water to public use and have demonstrated necessity for the water.

Section 4. Conduct of the Condemnation Proceeding. The Parties agree to take such steps as necessary to bring Tumwater and Lacey into the Condemnation Proceeding as petitioners, and further to work cooperatively and in good faith to determine the future conduct and/or resolution of the Condemnation Proceeding. In addition, the parties agree that they will not take actions independently that are not in the joint interests of all parties as set forth in this Agreement.

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Section 5. Confirmation of Validity and Approval of Transfer and Change of

Use. The Parties agree that, prior to obtaining a judgment and decree of appropriation transferring water rights associated with the former Olympia Brewery, in the Condemnation Proceeding, they shall seek to maximize the determination of the extent and validity of the Water Rights and the transfer of the Water Rights to the cities for municipal use. The Parties agree to act in good faith and use their best efforts to achieve the goal of maximizing the water that can be put to use by the three cities, including without limitation execution or production of any necessary documents, and provision of any information necessary to prosecute the Condemnation Proceeding or other proceeding or to receive a decision regarding the extent, validity and transfer of the Water Rights.

Section 6. Withdrawal from Agreement. Any party may withdraw from this agreement upon thirty (30) days advance written notice, payment in full of the attorneys' fees and/or costs allocated to that party under Section 2 above or costs and fees awarded to an adverse party and incurred as of the date notice is given. If the withdrawing party has received water or water rights pursuant to Section 1 above prior to giving notice of withdrawal, the withdrawing party will convey and transfer said water or water rights evenly to the remaining parties. If the withdrawing party has not yet received water or water rights under Section 1 above, subsequent to the party's withdrawal and payment of attorneys' fees and costs under this Section 6, the withdrawing party's allocation of water and costs under Sections 1 and 2 shall be divided evenly among the remaining parties. If a party has received water or water rights under Section 1 above, it shall offer the other



parties a right of first refusal prior to that party seeking to sell, lease or transfer the water or water rights obtained hereunder to another person or entity.

Section 7. Changes. Any party may request changes to this Agreement, however, no change or addition to this Agreement shall be valid or binding upon any party unless such change or addition be in writing and signed by the Parties. Such amendments shall be attached to and made part of this Agreement.

Section 8. Attorney fees and costs. If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party(s), in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

Section 9. Jurisdiction and Venue. This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Thurston County, Washington.

Section 10. Severability. If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the



particular provision held to be invalid. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions.

Section 11. Entire Agreement. The Parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by the Parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. The Parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the Parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

Section 12. Term. This Agreement will become effective upon the later of: approval of the Agreement by each jurisdiction's governing body and recording the Agreement with the Thurston County Auditor and shall remain in force until completion of the processes contemplated herein or upon an earlier termination through mutual agreement of all Parties.

Section 13. Administrator of Agreement. The City of Olympia shall be the

Administrator of this Agreement.

CITY OF OLYMPIA

Laura Ware
Laura Ware
Mayor Pro-Tem

3-14-06
Date

ATTEST:

Jane Ryzand Kikemo
City Clerk

APPROVED AS TO FORM:

Bob C. Sterbank
Bob C. Sterbank, City Attorney

CITY OF TUMWATER

Ralph Osgood
Ralph Osgood, Mayor

3-9-06
Date

ATTEST:

Sheryl Wyatt
City Clerk

APPROVED AS TO FORM:

Christy A. Todd
Christy A. Todd, City Attorney

CITY OF LACEY

Greg I. Culp
Greg I. Culp, City Manager

3-03-06
Date

ATTEST:

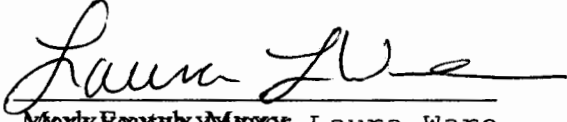
Charlotte M. Taylor
City Clerk

APPROVED AS TO FORM:

Kenneth R. Ahlf
Kenneth R. Ahlf, City Attorney

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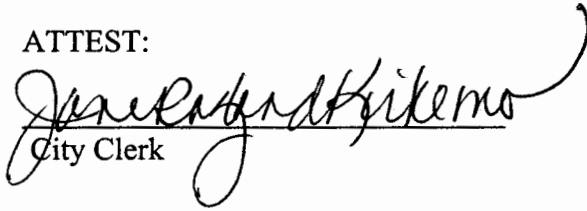
CITY OF OLYMPIA



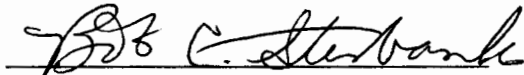
~~Mark Fournier, Mayor~~ Laura Ware
Mayor Pro-Tem

3-14-06
Date

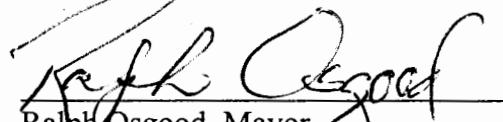
ATTEST:


City Clerk

APPROVED AS TO FORM:


Bob C. Sterbank, City Attorney

CITY OF TUMWATER



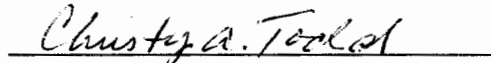
Ralph Osgood, Mayor

3-9-06
Date

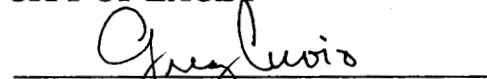
ATTEST:


City Clerk

APPROVED AS TO FORM:


Christy A. Todd, City Attorney

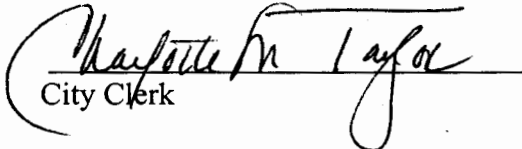
CITY OF LACEY



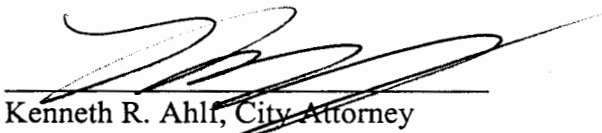
Greg J. Cudio, City Manager

3-6-06
Date

ATTEST:


City Clerk

APPROVED AS TO FORM:


Kenneth R. Ahlf, City Attorney