

When recorded return to:

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

**INTERLOCAL AGREEMENT BETWEEN
THE CITIES OF OLYMPIA, LACEY, AND YELM
FOR IMPLEMENTING DESCHUTES WATER RIGHTS
MITIGATION STRATEGY – PHASE VI**

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 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 shall set forth its purposes, powers, rights, objectives and responsibilities of the contracting parties; and

WHEREAS, the Cities have submitted applications for water rights to Washington Department of Ecology (WDOE); and

WHEREAS, in order to secure approvals of those water rights, the Cities have cooperatively developed a mitigation strategy for the Deschutes River that has been accepted by the WDOE; and

WHEREAS, the mitigation strategy includes restoration of 200 acres of farmland jointly purchased by the Cities in the Deschutes River watershed (Deschutes River property). Habitat restoration mitigation actions took place over several years on the property and included: riparian planting along 1 mile of river frontage, stream channel and wetland restoration, and ongoing land management responsibilities; and

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WHEREAS, by Interlocal Agreement effective November 14, 2007, the Cities completed Phase I of a water rights acquisition strategy by identifying potential water rights for acquisition; and

WHEREAS, by amended Interlocal Agreement effective January 19, 2010, the Cities completed Phase II of a water rights acquisition strategy for mitigation purposes by jointly acquiring water rights and property in the Deschutes River basin and developing a habitat restoration assessment for that property; and

WHEREAS, Olympia's water rights were issued by WDOE in December 2011 and Lacey's water rights were issued by May 2012, and Yelm's water right was approved but appealed in November 2011; and

WHEREAS, through Interlocal Agreement effective August 23, 2012, the Cities completed Phase III of the Deschutes Mitigation Strategy by retiring water rights; fencing the Deschutes River property; developing a 60% design for habitat restoration mitigation actions, project schedule and costs for habitat restoration mitigation actions identified in the cities' mitigation plans; and contracting for the services of a project manager to coordinate and lead this effort; and

WHEREAS, through a letter of agreement dated October 30, 2014, the City of Olympia planted a 50-foot wide riparian buffer along the Deschutes River on the Deschutes River property; and

WHEREAS, through Interlocal Agreement effective April 27, 2015, the Cities completed Phase IV of the Deschutes Mitigation Strategy by advancing to 100% the design and bid specifications for the habitat enhancement projects that were designed to 60% under Phase III, applying for and obtaining necessary project permits, and hiring consultants to help support this effort and to oversee ongoing property management; and

WHEREAS, on October 8, 2015, WDOE's approval of Yelm's water right application was overturned by the Washington State Supreme Court thereby eliminating any immediate benefit Yelm would receive from habitat enhancement mitigation projects but not diminishing Yelm's interests as a joint owner of the Deschutes River property; and

WHEREAS, Yelm's water rights were approved and issued through a pilot project on June 16, 2022; and

WHEREAS, through Interlocal Agreement effective September 12, 2017, the Cities of Olympia and Lacey jointly continued implementation of the Deschutes Mitigation Strategy by completing habitat restoration projects designed under Phase IV, for which the City of Yelm provided back payment of Phase V construction costs and the Cities funded and completed property management and property stewardship planning tasks: and

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WHEREAS, the Cities may be doing other restoration work on the Deschutes River Farm property not related to this Interlocal Agreement, but through a Memorandum of Understanding (MOU) with the Squaxin Island Tribe signed November 29, 2011. In this MOU the Cities have agreed to form the Budd/Deschutes Watershed Environmental Stewardship Coalition and provide additional funding for habitat restoration activities; and

WHEREAS, the Cities have completed the construction of their mitigation obligations but continue to have joint property management and stewardship planning responsibilities on the Deschutes River Farm property;

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

I. Purpose/Objective

The Cities (also the “Parties”) have jointly purchased property on the Deschutes River for the purpose of cooperatively implementing the Deschutes Mitigation strategy that was approved by WDOE. Implementation of that plan is required by water rights issued to Olympia (ROEs CS2-SWC8030, CS2-01105, CS2-SWP10191), Lacey (ROEs G2-29165, G2-29304, G2-30250, G2-30251, G2-30248, G2-30249) and Yelm (ROE G2-29085).

While the Cities have jointly completed construction of the Deschutes Mitigation strategy the Cities continue to have joint property management responsibilities.

The purpose of this Agreement is to outline the Cities of Olympia, Lacey, and Yelm responsibilities as joint owners of the Deschutes River property and to establish a commitment to jointly develop a mutually agreed to long-term property stewardship and ownership strategy which could include, but is not limited to, reaching a conservation and stewardship agreement and property transfer with a third party.

II. Scope of Agreement/Work

Selection of a Property Management Contractor

The Cities will jointly develop and issue a Request for Qualifications (RFQ) for a consultant, organization or outside agency to conduct property management activities. The RFQ will include the general scope and nature of the work to be performed and will describe the selection criteria. Once selected, the Cities shall jointly enter into a professional service agreement with the selected consultant, organization or agency.

Property management activities under this ILA are expected to include:

- Mowing/Pasture Management
- Noxious weed treatment/removal
- Fence repair, and new fence installation, if mutually agreed to
- A minimum of twice-yearly contractor/Cities property management coordination meetings
- Beaver management
- Plant establishment monitoring
- Minor planting maintenance, if mutually agreed to
- Others items to be determined through mutual decision making

The Cities will jointly direct the work of the successful contractor, consultant, organization, or agency through a consensus-based decision-making process.

This agreement also allows the Cities 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 may also jointly hire legal counsel on issues related to property management topics. Legal advice provided to the Cities shall be considered attorney client privileged communications not subject to disclosure.

In the event it is necessary for the Cities to enter into more than one professional services agreement for property management services under this Agreement due to contract expiration or other reasons, the RFQ issuance and selection process outlined in this section will be followed.

The Cities agree to share equally in property management costs. Any professional services agreement put together for property management activities under this agreement will require the contractor to provide invoices to each individual City (Olympia, Lacey, Yelm) for its pro-rata share of the invoice total.

Long-term Property Ownership Strategy

The Cities agree to jointly develop a long-term property ownership strategy, including options for a land conservancy or land trust agreement with a third party for approval by each individual jurisdictions' governing body. Coordination with the Washington State Department of Ecology on long-term stewardship and conservation requirements and process to protect the function and values of the mitigation action at the site is expected to occur as a component of strategy development.

If mutually agreed to, the Cities may jointly develop and issue a Request for Qualifications (RFQ) for a consultant, organization or outside agency to assist with the development of a long-term property ownership strategy. The RFQ will include the general scope and nature of the work to be performed and will describe the selection criteria.

The Cities agree to share equally in strategy development costs, if any beyond individual jurisdictions' staff time which will not be cost-shared.

Any professional services agreement put together for assistance with the development of a long-term property ownership strategy under this Agreement will require the contractor to provide invoices to each individual City (Olympia, Lacey, Yelm) for its pro-rata share of the invoice total.

The Cities may also jointly hire legal counsel on issues related to development of a long-term property ownership. Legal advice provided to the Cities shall be considered communications subject to the attorney client privilege and not subject to disclosure.

Meetings

The Cities agree that at a minimum twice-yearly joint property ownership meetings will be held throughout the effective period of this Agreement. One such meeting shall be scheduled in the second quarter of each year to establish projected budget needs for the next year.

The Cities acknowledge that more frequent meetings will be necessary to develop a long-term property ownership strategy and agree to establish a project meeting schedule and strategy development framework within 90-days of Agreement execution.

Olympia agrees to coordinate meetings envisioned under this Agreement, including agenda establishment, until such time either Lacey or Yelm agree to do so.

III. Property Access

This agreement grants the Cities and their contractors, individually or in collaboration, access to the Deschutes River property to perform property management activities or to conduct field visits as outlined in this agreement, the property management professional services agreement or the Deschutes Mitigation Strategy. In the event an individual City is interested in conducting additional habitat mitigation work on the property, such City shall seek a letter of support from the other Cities prior to beginning any such work. The

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Cities agree that it is not necessary to seek written permission to conduct general field visits.

The Cities agree to otherwise limit access to the Deschutes River property unless as mutually agreed to.

The Cities recognize that other parties may be interested in constructing additional mitigation or restoration work on the Deschutes River property, conducting field visits and/or visiting the site for recreational purposes. The Cities will use the following general guidelines when approached by other parties requesting access on the property:

- Access for recreational purposes (i.e., fishing, hunting) will not be allowed
- Field visits for environmental education purposes will be considered provided a representative from one or more Cities is present during the event.
- Additional mitigation or restoration work by a nonprofit organization shall be considered on a case-by-case basis provided such work does not jeopardize the Cities' water rights.

Such permissions, if granted, shall be provided in a written letter of support signed by the Cities and grantee shall agree to indemnification language.

IV. Indemnification

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, agents, and employees.

VII. No Separate Legal Entity Created

This Agreement creates no separate legal entity.

VIII. 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 as provided herein.

IX. 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 address their differences by informal negotiation. The Party perceiving a dispute or disagreement persisting after informal attempts at resolution shall notify the other Parties 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 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. Each Party will bear the cost of its own attorneys, consultants, and other Step Two expenses. The parties to the mediation will equally 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 legal action. 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.

X. Termination of Agreement

This Agreement may be terminated upon mutual agreement of the Cities.

XI. 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 the Superior Court of Thurston County for the State of Washington.

XII. 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.

XIII. Recording

Prior to its entry into force, 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.

XIV. Counterparts

This Agreement may be executed in counterparts, and all such counterparts once so executed shall together be deemed to constitute one final agreement, as if one document had been signed by all Parties, and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding on the parties. A faxed or email copy of an original signature, or a digital or electronic signature where permitted by law, shall be deemed to have the same force and effect as the original signature.

XV. Notice

Any notice required under this Agreement shall be to the Party at the address listed below and shall become effective five days following the date of deposit with the United States Postal Service.

CITY OF OLYMPIA:

Attn: Mark Russell, Interim Public Works Director
Re: Water Rights Mitigation/Deschutes Basin
PO Box 1967
Olympia, WA 98507-1967

CITY OF LACEY:

Attn: Peter Brooks, Water Resource Manager
Re: Water Rights Mitigation/Deschutes Basin
420 College St SE
Lacey, WA 98503

CITY OF YELM:

Attn: Cody Colt, Public Services Director
Re: Water Rights Mitigation/Deschutes Basin
106 2nd St SE
Yelm, WA 98597

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

Steven J. Burney
Steven J. Burney, City Manager

Date: 07/12/2023

Approved as to form:

Mark Barber
City Attorney

CITY OF YELM

Mayor

Date: _____

Approved as to form:

Attorney for City of Yelm

CITY OF LACEY

DocuSigned by:
Rick Walk
FB22A0AE8941409...

City Manager

8/24/2023
Date: _____

Approved as to form:

DocuSigned by:
David Schneider
E60EBB47FF4C4D1...

City Attorney

Certificate Of Completion

Envelope Id: C4CCDE8AC6874959A65C7AD4E1959274	Status: Completed
Subject: Complete with DocuSign: July_12_ILA_Deschut Oly Doc Sign.pdf	
Source Envelope:	
Document Pages: 12	Signatures: 2
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelope Stamping: Enabled	Nicole Williams
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	420 College Street SE
	Lacey, WA 98597
	Nwilliam@ci.lacey.wa.us
	IP Address: 50.232.235.42

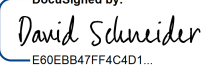
Record Tracking

Status: Original	Holder: Nicole Williams	Location: DocuSign
8/9/2023 11:27:07 AM	Nwilliam@ci.lacey.wa.us	

Signer Events

David Schneider
dave@laceylawgroup.com
Security Level: Email, Account Authentication (None)

Signature

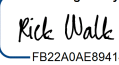
DocuSigned by:

E60EBB47FF4C4D1...
Signature Adoption: Pre-selected Style
Using IP Address: 74.94.72.67

Timestamp

Sent: 8/9/2023 11:29:08 AM
Viewed: 8/9/2023 12:18:09 PM
Signed: 8/9/2023 12:22:26 PM

Electronic Record and Signature Disclosure:
Accepted: 8/9/2023 12:18:09 PM
ID: 4394025c-ed7c-4cec-9d1c-cc7a2061eb92

Rick Walk
rwalk@ci.lacey.wa.us
Security Level: Email, Account Authentication (None)

DocuSigned by:

FB22A0AE8941409...
Signature Adoption: Pre-selected Style
Using IP Address: 50.232.235.42

Sent: 8/9/2023 12:22:27 PM
Resent: 8/24/2023 10:08:37 AM
Resent: 8/24/2023 10:09:43 AM
Viewed: 8/24/2023 4:33:49 PM
Signed: 8/24/2023 4:34:12 PM

Electronic Record and Signature Disclosure:
Accepted: 8/24/2023 4:33:49 PM
ID: 4c26bf8d-5279-434c-936a-45e64c75aac9

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Peter Brooks
pbrooks@ci.lacey.wa.us
Security Level: Email, Account Authentication (None)

COPIED

Sent: 8/24/2023 4:34:13 PM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Carbon Copy Events	Status	Timestamp
Elissa Fontaine efontain@ci.lacey.wa.us Deputy City Clerk City of Lacey Security Level: Email, Account Authentication (None)	COPIED	Sent: 8/24/2023 4:34:13 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	8/9/2023 11:29:08 AM
Envelope Updated	Security Checked	8/9/2023 11:34:17 AM
Certified Delivered	Security Checked	8/24/2023 4:33:49 PM
Signing Complete	Security Checked	8/24/2023 4:34:12 PM
Completed	Security Checked	8/24/2023 4:34:13 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Lacey (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Lacey:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by phone call: 360-486-8704

To contact us by email send messages to: pedmonds@ci.lacey.wa.us

To advise City of Lacey of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at pedmonds@ci.lacey.wa.us and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from City of Lacey

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to pedmonds@ci.lacey.wa.us and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Lacey

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to pedmonds@ci.lacey.wa.us and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify City of Lacey as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by City of Lacey during the course of your relationship with City of Lacey.