

**2010 LAKE TAPPS AREA WATER RESOURCES AGREEMENT  
AMONG THE CITIES OF AUBURN, BONNEY LAKE, BUCKLEY AND SUMNER,  
AND CASCADE WATER ALLIANCE**

**THIS LAKE TAPPS AREA WATER RESOURCES AGREEMENT** (“Agreement”) made and entered into on the 5<sup>th</sup> day of February, 2010, by and among the CITY OF AUBURN, (“Auburn”), the CITY OF BONNEY LAKE, (“Bonney Lake”) the CITY OF BUCKLEY, (“Buckley”) the CITY OF SUMNER, (“Sumner”) (all municipal corporations of the State of Washington, collectively, the “Four Cities”) and the CASCADE WATER ALLIANCE, a Washington non-profit corporation (“Cascade”). The Four Cities and Cascade together are sometimes collectively referred to as the “Parties.”

**DEFINITIONS:**

“**Water Right**” shall mean the water right applications submitted to the Department of Ecology (“Ecology”) S2-29920, R2-29935, and S2-29934 in their current form or as may be modified and as approved by Ecology .

“**Cascade’s Tacoma Wholesale Agreement**” means *the Agreement For The Sale of Wholesale Water Between The City of Tacoma, Department of Public Utilities, Water Division and Cascade Water Alliance*, dated October 13, 2005. The terms “**Capacity Reservation Fee,**” “**Peaking Factor,**” and “**System Development Charges**” are used in this Agreement as defined in Cascade’s Tacoma Wholesale Agreement.

“**City**” means one of the Four Cities individually.

“**Other Agreements**” means *the Agreement Regarding Reservoir Management Between PSE and the Lake Tapps Community*, dated March 31, 2004; *the White River Management Agreement Between the Puyallup Tribe of Indians, the Muckleshoot Indian Tribe, and Cascade Water Alliance*, dated August 6, 2008; *the Lake Tapps Water Rights Settlement Agreement*, dated August 6, 2008; *the Natural Resources Enhancement Agreement with the Puyallup Tribe of Indians*, dated August 6, 2008; and *the 2009 Agreement Regarding Lake Tapps between Cascade Water Alliance and the Lake Tapps Community*, dated May 13, 2009.

**TERMS OF AGREEMENT**

In consideration of their mutual covenants, conditions and promises, **THE PARTIES HERETO AGREE** as follows:

**EFFECTIVE DATE AND TERM:** This Agreement shall take effect when executed by the Parties and shall remain in full force and effect for fifty (50) years, unless terminated (in whole or in part) earlier in accordance with Sections 4 and 10. Provided, that any actions taken to enforce this Agreement before it expires, any conditions contained in permits issued pursuant to or implementing the terms of this Agreement, and any contracts to purchase water shall survive this Agreement. The Term of this Agreement may be extended by written agreement of the Parties.

**CASCADE’S RESPONSIBILITIES:**

1. **Lake Tapps Municipal Advisory Group.** Cascade agrees to the establishment of the Lake Tapps Municipal Advisory Group as follows:
  - a. The Lake Tapps Municipal Advisory Group shall consist of the elected Mayors of each of the Four Cities and three (3) members of the Cascade Board of Directors (the Cascade Board). If any of the Four Cities becomes a Member of Cascade, the Mayor of that City will not be considered a member of the Lake Tapps Municipal Advisory Group unless appointed as a representative of the Cascade Board.
  - b. The Lake Tapps Municipal Advisory Group will be a non-voting entity with the purpose of: (1) advising the Four Cities of proposed or pending Cascade decisions or actions related to the management of Lake Tapps that may affect the Four Cities; (2) advising Cascade of any issue that the Four Cities may have related to Cascade’s management of Lake Tapps; (3) seeking cooperative resolution of any issues raised by Cascade or the Four Cities; and (4) any other matters related to the implementation of provisions of this Agreement.
  - c. The Lake Tapps Municipal Advisory Group will meet at least twice annually, with such meetings to be generally held in early/mid October and early/mid April, or as otherwise agreed by the members. Meetings may include staff of Cascade and the Four Cities as determined by the group. At the regular meeting of the Cascade Board immediately following a meeting of the Lake Tapps Municipal Advisory Group, a representative of the group will report on the issues discussed and present any recommendations for cooperative resolution of any issues discussed.
2. **Remedies for Negative Impact on Water Supply.** In accordance with the terms of this Agreement, if Cascade’s Lake Tapps water supply operations result in a negative impact to the water supplies of one of the Four Cities that is not a Cascade member, the City claiming a negative impact must notify Cascade of their claim and give Cascade at least sixty days to resolve the claimed impact. If Cascade fails to resolve the claimed negative impact or disputes that the negative impact exists, the City claiming the negative impact may pursue existing legal remedies in accordance with state and federal law. If a court

determines that a negative impact has occurred, Cascade shall implement a remedy acceptable to the claiming City or, if the affected City or Cities and Cascade can not agree on a remedy, the court shall establish the terms for the remedy.

**3. Water Supply Assistance.** Cascade agrees to assist the Four Cities in their efforts to meet their respective projected 50-year water needs by implementing one or more of the following measures:

**a. Tacoma Wholesale Water.** Through December 31, 2026, Cascade shall make available the following water supply that may be purchased by the Four Cities either individually or jointly: up to six (6) million gallons per day (MGD) under section 6.2 of Cascade's Tacoma Wholesale Agreement (hereinafter referred to as "Cascade's Guaranteed Reserve Capacity") and up to four (4) MGD under section 6.1 of Cascade's Tacoma Wholesale Agreement (hereinafter referred to as "Cascade's Permanent Capacity") under the following conditions:

- 1) For water supply from Cascade's Guaranteed Reserve Capacity to be available throughout the year, the City agrees to pay to Cascade an amount equal to the Capacity Reservation Fee (CRF) paid to Tacoma multiplied by the amount to be purchased in MGD (\$1,570,074.00 per MGD). It is understood that this Guaranteed Reserve Capacity water includes a peaking factor of 1.33 for the months of June through September and the City agrees to pay this fee.
- 2) For water supply from Cascade's Guaranteed Reserve Capacity to be available only during the peak season (June through September), the City agrees to pay to Cascade an amount equal to a pro-rated portion of the Capacity Reservation Fee paid to Tacoma multiplied by the amount to be purchased in MGD (1/3 of the CRF or \$523,358.00 per MGD). It is understood that this Guaranteed Reserve Capacity water includes a peaking factor of 1.33 for the months of June through September and the City agrees to pay this fee.
- 3) For water supply from Cascade's Permanent Capacity to be available either during peak period only or throughout the year, the City agrees to pay to Cascade an amount equal to the System Development Charge (SDC) paid by Cascade to Tacoma multiplied by the amount to be purchased in MGD (\$4,121,000 per MGD) prorated by the number of months the water will be used each year. (For example, if a City purchases 1 MGD only from June through September, it would pay 1/3 of the SDC, or \$1,373,667 per MGD.) It is understood that this Permanent Capacity water includes a peaking factor of 1.33 for the months of June through September and the City agrees to pay this fee.

- 4) Each City that purchases water under this Section 3 of this Agreement will designate a delivery point and either pay Tacoma directly or reimburse Cascade for costs incurred to install necessary service taps, meters or vaults. Any infrastructure beyond the designated delivery point that may be required to deliver the purchased water to retail customers will be solely the responsibility of the City.
  - 5) Each City that purchases water under this Section 3 of this Agreement will provide Cascade with the necessary delivery scheduling information required under Cascade's Tacoma Wholesale Agreement, and will reimburse Cascade for all wholesale charges from Tacoma associated with deliveries at the City's delivery point, in accordance with the provisions of Section 9.1 of Cascade's Tacoma Wholesale Agreement, except for Cascade's obligation to pay the Minimum Monthly Bill.
  - 6) At any time prior to December 31, 2026, any of the Four Cities that have entered into wholesale water purchase agreements with Cascade under this Section 3 of this Agreement may ask Cascade to request that Tacoma make permanent the amount of water being purchased from Cascade under this Section 3 in accordance with section 15.1 of Cascade's Tacoma Wholesale Agreement. If approved by Tacoma, the requesting City agrees to pay to Cascade any amounts due from Cascade to Tacoma pursuant to section 15.1.2 of Cascade's Tacoma Wholesale Agreement for the duration of Cascade's obligation to Tacoma.
  - 7) Cascade shall not terminate, relinquish or amend Cascade's Tacoma Wholesale Agreement in any way that adversely impacts the Four Cities' ability to purchase water as set forth in this Agreement without the prior express written consent of the Four Cities.
- b. Regional Reserved Water.** Through December 31, 2030, Cascade will provide Lake Tapps Region Reserved Water ("Regional Reserved Water") to assist the Four Cities to secure or apply for alternative water supplies or water rights under the following conditions:
- 1) Cascade will include Regional Reserved Water, consistent with this Agreement, in its State Environmental Policy Act (SEPA) Draft Environmental Impact Statement (DEIS) regarding the Lake Tapps Water Rights and Supply Project.
  - 2) Subject to the SEPA DEIS process, Cascade will request approval by Ecology of the Lake Tapps municipal water right application as follows:

(a) Regional Reserved Water in an amount of seven (7) cubic feet per second (cfs) annual average (Qa) and ten (10) cfs maximum instantaneous (Qi) would be reserved for the use by any or all of the Four Cities to mitigate impacts on the White River of new water rights or changes to existing water rights.

(b) Regional Reserved Water would not be diverted into Lake Tapps, but instead be allowed to flow down the White River for potential use by any of the Four Cities.

- 3) If such Regional Reserved Water is approved by the Department of Ecology as provide in this Agreement, use of such Regional Reserved Water may be included as part of a water right application submitted individually by any of the Four Cities. Ecology approval of water rights utilizing Regional Reserved Water must be secured by the City on or before December 31, 2030. Beneficial use of such Regional Reserved Water will take place consistent with approved development schedules included in those water right approvals. Any Regional Reserved Water not authorized for use in a water right approved by December 31, 2030, shall revert to Cascade.
- 4) Cascade shall have no other obligation or involvement in any water right applications submitted by the Four Cities utilizing the Regional Reserved Water. Any concerns Cascade may have regarding a City's application shall be raised pursuant to the dispute resolution provisions of Section 18 of this Agreement, prior to pursuing any legal action, including administrative appeals.
- 5) Within 90 days of any of the Four Cities receiving final approval of new or changed water rights incorporating use of Regional Reserved Water, that City shall pay Cascade a one-time Regional Water Charge equal to \$743,950.00 per cfs. If the water right includes seasonal limitations on use of Regional Reserved Water, the Regional Water Charge shall be pro-rated to reflect the seasonal availability of such water.

**c. Water from Tailrace.** Subject to availability and to supporting findings in a report of examination for one of the Four Cities' new or changed water right applications, Cascade would provide water by releasing water from the Lake Tapps Project tailrace to the White River, on terms to be negotiated by Cascade and the requesting City.

**d. Support.** In order to support the efforts made by any of the Four Cities to acquire new water rights or transfer existing water rights, and upon request by any of the Four Cities, Cascade shall provide technical support, in the form of access to existing modeling and any other technical documentation available to Cascade. Upon request of the Four

Cities and so long as consistent with Other Agreements and approvals related to the Lake Tapps Project, Cascade shall also provide letters or other documentation in support of actions taken by the Four Cities to secure new water rights or transfers of water rights, including but not limited to letters of support in establishing a finding of overriding considerations of the public interest by the Department of Ecology pursuant to RCW 90.54.020(3)(a).

**4. Termination.** Cascade's obligations under Sections 1 through 3 of this Agreement are in force and effect as to each City only so long as that City fulfills its obligations under this Agreement and has not appealed the Water Right.

**5. Local Franchise and Permit Requirements.** When operating in any of the Four Cities' municipal boundaries, Cascade will comply with all of that City's franchise and permitting requirements.

#### **CITIES' RESPONSIBILITIES:**

**6. Purchase of Tacoma Wholesale Water.** The Four Cities, collectively or individually, at each City's sole discretion, agree to buy water under Cascade's Tacoma Wholesale Agreement at the rates, including connection and wholesale charges as set forth in this Agreement. The Four Cities shall be responsible for dividing the purchased capacity among themselves, and shall negotiate wheeling or other applicable agreements either with Cascade or directly with Tacoma Water. Except as expressly provided otherwise in this Agreement, the Four Cities agree to be bound by the terms of the Cascade's Tacoma Wholesale Agreement.

**7. Dismissal of Litigation.** Within fifteen (15) business days after filing and/or recording of this Agreement, Auburn will withdraw and dismiss its pending lawsuit, with prejudice, against Cascade (King County Case Number 05-2-35788-6).

**8. Four Cities Support of the Water Right.** So long as the EISs are issued by Cascade and the Water Right is approved by Ecology consistent with this Agreement, the Four Cities will support the EISs and the Water Right.

**9. Municipal Advisory Group.** The Four Cities, represented by their duly elected Mayors, will participate in the Lake Tapps Municipal Advisory Group as described in this Agreement.

**10. Amending Legislation.** Within thirty (30) days of issuance of the Water Right consistent with this Agreement, the Four Cities will support legislation amending RCW 39.34.215 by deleting subsections (4) (c) and (5).

**11. Termination.** The Four Cities' obligations under Sections 6 through 10 of this Agreement

are in force and effect only so long as Cascade fulfills its obligations under this Agreement and the ROEs issued by Ecology for the Water Right are consistent with this Agreement regarding the Regional Reserved Water.

## GENERAL

**12. Indemnification.** Each Party shall indemnify and hold the other Parties and their agents, employees, and/or officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against that Party arising out of, in connection with, or incident to the execution of this Agreement and/or the Indemnifying Party's performance or failure to perform any aspect of this Agreement; provided, that nothing herein shall require an Indemnifying Party to hold harmless or defend any other Party, its agents, employees and/or officers from any claims arising from the sole negligence of that other Party, its agents, employees, and/or officers. No liability shall attach to any Party by reason of entering into this Agreement except as expressly provided herein.

**13. Compliance with regulations and laws.** The parties shall comply with all applicable rules and regulations pertaining to them in connection with the matters covered herein.

**14. Assignment.** No Party shall assign this Agreement or any interest, obligation or duty therein without the express written consent of all other parties.

**15. Attorneys' Fees.** If any party shall be required to bring any action to enforce any provision of this Agreement, or shall be required to defend any action brought by the other party with respect to this Agreement, and in the further event that one party shall substantially prevail in such action, the losing party shall, in addition to all other payments required therein, pay all of the prevailing party's reasonable costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorney's fees in the trial court and in any appellate courts.

**16. Notices.** All notices and payments hereunder may be delivered or mailed. If mailed, they shall be sent to the following respective addresses:

City of Auburn  
25 West Main  
Auburn, WA 98001-4998  
Attn: Public Works Director  
Phone:(253) 931-3000  
Fax: (253) 931-3053

City of Bonney Lake  
19306 Bonney Lake Blvd.  
Bonney Lake, WA 98391  
Attn: Public Works Director  
Phone: (253) 862-8602  
Fax: (253) 862-8538

City of Buckley  
933 Main St  
PO Box 1960  
Buckley, WA 98321  
Attn: City Administrator  
Phone: (360) 829-1921  
Fax: (360) 829-2659

City of Sumner  
1104 Maple St.  
Sumner, WA 98390  
Attn: Public Works Director  
Phone: (253) 863-8300  
Fax: (253) 299-5509

Cascade Water Alliance  
11400 SE 8th Street, Suite 440  
Bellevue, Washington 98004  
Attn: Chief Executive Officer  
Phone: (425) 453-0930  
Fax: (425) 425-453-0953

General Counsel, Cascade Water Alliance  
GordonDerr, LLP  
2025 First Avenue South, Suite 500  
Seattle, Washington 98128-3140  
Phone: (206) 382-9540  
Fax: (206) 625-0675

or to such other respective addresses as any party hereto may hereafter from time to time designate in writing. All notices and payments mailed by regular post (including first class) shall be deemed to have been given on the second business day following the date of mailing, if properly mailed and addressed. Notices and payments sent by certified or registered mail shall be deemed to have been given on the next business day following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing.

**17. Enforceability:** The Parties intend this Agreement to be certain and enforceable, as well as a mechanism for ongoing collaboration as to any issues that may arise in connection with implementation of the Agreement. Except as necessary for compliance with and enforcement of this Agreement, the parties do not intend this Agreement to modify their respective rights or authorities.

**18. Dispute Resolution.** In the event that any dispute arises between Cascade and the Four Cities, the aggrieved Party shall give a notice of the dispute to the other Party as provided in Section 16. Cascade and the Four Cities shall, within five (5) days of such notice, each nominate a senior officer of its management to meet at a mutually agreed location, to attempt to resolve such dispute. The Parties shall each designate a representative(s) to confer on the best and most cost effective way to resolve the dispute. By mutual agreement, they may choose direct negotiations or mediation. If there is no agreement between the Parties on how to proceed within thirty (30) days, either Party may pursue legal action; provided however, no Party shall be precluded from filing an appeal or action to prevent the expiration of a time period for filing or any statute of limitations.



**19. Non-Waiver.** No delay or failure by a Party to exercise any of its rights, powers or remedies under this Agreement following any breach by another Party shall be construed to be a waiver of any such breach, or any acquiescence therein, or of or in any similar breach thereafter occurring, nor shall any waiver of any single breach be deemed a waiver of any other breach theretofore or thereafter occurring.

**20. Severability.** In the event that any of the terms of this Agreement are in conflict with any rule of law or statutory provision or otherwise unenforceable, such terms will be deemed stricken from this Agreement, but such invalidity or unenforceability will not invalidate any of the other terms of this Agreement, and this Agreement will continue in force, unless the invalidity or unenforceability of any such provisions hereof does substantial violence to, or where the invalid or unenforceable provisions comprise an integral part of, or are otherwise inseparable from, the remainder of this Agreement.

**21. No Third Party Beneficiary.** This Agreement is for the sole and exclusive benefit of the Parties and is not intended to and shall not confer any rights or benefits on any third party not a signatory hereto.

**22. Amendment.** This Agreement only may be amended or supplemented in a writing signed by the Parties.

**23. Survival of Claims.** Any claim that a Party has asserted by raising it under the Dispute Resolution provisions of this Agreement prior to the termination of this Agreement and that may reasonably be interpreted or construed to survive the termination of this Agreement shall survive the termination of this Agreement.

**24. Signature in Counterpart.** This Agreement may be executed in any number of counterparts and all of those counterparts taken together shall constitute one and the same instrument.

**25. Further Assurances.** Each Party covenants and agrees to do all things necessary or advisable in order to confirm and better assure the intent and purposes of this Agreement.

**26. Authority.** Each party, by executing this Agreement warrants that it has duly approved this Agreement and has the power to enter into this Agreement and to enforce its terms.

**27. Good Faith Commitment to Support Agreement.** The Parties covenant and agree to act in good faith and to support the terms and validity of this Agreement. Cascade shall, during the term of this Agreement, support and defend the validity of the Agreement and shall not seek, either directly or indirectly, to invalidate the Agreement or undermine or modify its terms and conditions through administrative, legislative, judicial or other means.

**28. Nondiscrimination.** Each of the parties, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or the presence of any sensory, mental or physical handicap be discriminated against or receive discriminatory treatment by reason thereof.

**29. Applicable Law.** This Agreement shall be deemed to be made and construed in accordance with the laws of the State of Washington jurisdiction and venue for any action arising out of this Agreement shall be in Pierce County, Washington.

**30. Captions.** The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.


**31. No Additional Entities Created.** Unless otherwise specifically provided herein, no separate legal entity is created hereby, as each of the parties is contracting in its capacity as a municipal corporation of the State of Washington; or as a Washington non-profit Corporation. The identity of the parties hereto is as set forth hereinabove.

**32. Integrated Agreement.** This Agreement constitutes the entire agreement between the parties. There are no terms, obligations, covenants or conditions other than those contained herein. No modifications or amendments of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by all parties.


**33. Filing.** Copies of this Agreement shall be filed with the King County Auditor's Office; the Pierce County Auditor's Office; the Secretary of State of the State of Washington; and the respective Clerks of the parties hereto.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the day and year first above written.

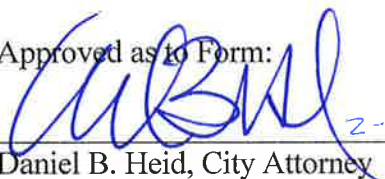
**CITY OF AUBURN**

  
Peter B. Lewis, Mayor Date

Attest:

 2/5/10  
Danielle Daskam, City Clerk Date

Approved as to Form:

 2-1-2010  
Daniel B. Heid, City Attorney Date

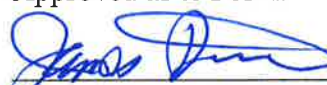
**CITY OF BONNEY LAKE**

 2/5/10  
Neil Johnson, Mayor Date

Attest:

 2/5/10  
Harwood T. Edvalson, CMC Date

Approved as to Form:

 2-2-10  
James Dionne, City Attorney Date

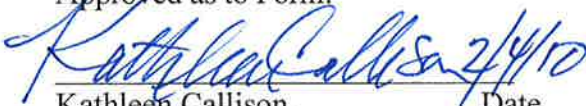
**CITY OF BUCKLEY**

 2/5/10  
Pat Johnson, Mayor Date

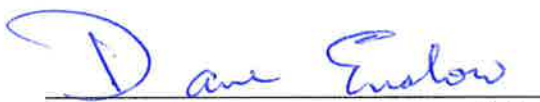
Attest:

 2-10-10  
Joanne Starr, Deputy City Clerk Date

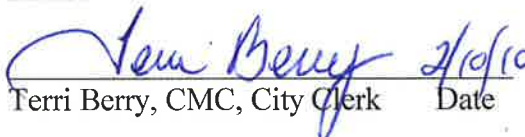
Approved as to Form:

 2/4/10  
Kathleen Callison,  
Law Office of Kathleen Callison, P.S. Date

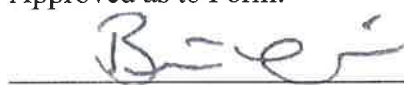
**CITY OF SUMNER**

  
Dave Enslow, Mayor Date

Attest:

 2/10/10  
Terri Berry, CMC, City Clerk Date


Approved as to Form:

 2/4/10  
Brett Vinson, City Attorney Date

**CASCADE WATER ALLIANCE**

  
Chuck Clarke, CEO Date

**CASCADE WATER ALLIANCE**

 2/5/10  
Tereese Richmond,  
General Counsel Date

