State of Oregon
Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900

Application for
Instream Lease

A summary of review criteria and procedures that are generally applicable to these applications is available at www.wrd.state.or.us/OWRD/PUBS/forms.shtml.

Pursuant to ORS 537.348(2) and OAR 690-077

Optional Identification by Lessor/Lessee: _____
Lease Application Number (assigned by WRD): [redacted] SL-12

This Lease is between:

Lessor #1:
Name City of Walla Walla
Mailing address P.O. Box 478
City, State, Zip Code Walla Walla, WA 99362
Telephone number 509-524-4510
Email address fnicholson@ci.walla-walla.wa.us

Lessor #2, 3, etc.
N/A

The water right to be leased is located in (as to its point of diversion) Umatilla County.

Lessee (if different than Oregon Water Resources Department):
Name _____
Mailing address _____
City, State, Zip Code _____
Telephone number _____
Email address _____

Trustee:
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1266
(503) 986-0900

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~I~ Water Right Holder and Water Right Information

1.1 Lessor #1 is the water right holder, or authorized agent for water right holder of the property located at: Township 6 N, Range 38 E, Section NW 1/4 of the NE 1/4 of section 22 i.e. the point of diversion location in Oregon. (The water right's place of use is the service area of the City of Walla Walla; all of said area being located in Washington State.) and Tax Lot number N/A. If the water right appurtenant to these lands is also appurtenant to lands owned by others who are not included in this application, then Attachment 1 (tax lot map), needs to be included.

1.2 Lessor #2 is the (Check one):
☒ Not applicable
☐ Official representative of _____, the irrigation district which conveys water to the subject water rights.
☐ Another party with an interest in the subject water rights representing _____.

1.3 For the water right(s) being leased, list all water rights appurtenant to the same lands. Indicate if there are any supplemental or overlying rights.

Certificate No. , a portion of Certificate No. 13276, namely 2.5 cfs (hereby limiting the maximum amount exerciseable by the City to 25.5 cfs rather than the certificate amount of 28 cfs), is to be leased. *As to other municipal use rights owned by the City there is one Oregon-law based right: Permit No. 84679 and the following Washington-law based rights: Permit No. 13121 and 6 ground water rights with points of withdrawal within the service area of the City of Walla Walla.

1.4 Are some or all of the lands being leased part of a Conservation Reserve Enhancement Program. ☐ Yes ☒ No

1.5 Water Rights Proposed to be Leased Instream.
The first right to be leased identified in Section 1.3 is further described as follows:
Certificate No.: 13276
Priority date: 1866 Type of use: municipal
Legal Season of Use: Year-round
Is the entire water right certificate being leased? ☐ Yes ☒ No

If no, list the acres of the subject water right by legal description of township, range, section, and ¼ ¼ which will be dried up as part of this lease, and include a map (Attachment 2) showing the lands which will not receive water.

Place of use: T ___, R ___, Section __, __¼ __¼ - _____ acres to be leased
Enter additional places of use here, using format above:

_____

Page _____ (Identify page number of certificate, if certificate is greater than 10 pages.)

Number of acres being leased, if for irrigation: N/A
Acre-feet of storage, if applicable: N/A
Maximum rate associated with the right to be leased (cfs): 2.5
(Use additional lines if there is more than one rate associated with the water right.)
Maximum duty associated with the right to be leased (ac-ft): N/A
(Use additional lines if there is more than one duty associated with the water right.)

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Conditions or other limitations, if any: See second paragraph on page 3 of Permit No. S-54483 (owned by the City) and page 4, condition 5 of water right 86088 (for the hydroelectric project) regarding City lease 2,5, in emergency conditions.

If you need to enter another leased right, please use the additional water rights form.

1.6 Validity of rights. Lessor(s) attests (mark one) that:

☒ the water has been used over the past five years according to the terms and conditions

of the water right certificate or as an instream water right or

☐ the water has not been used over the past five years according to the terms and conditions of the water right certificate, however the water right is not subject to forfeiture under ORS 540.610(2)(_)(include necessary supporting documentation as Attachment 3).

~II~ Instream Water Right Information

2.1 Public use. This lease will increase streamflows that will benefit:

☒ Conservation, maintenance and enhancement of aquatic and fish life, wildlife, and fish and wildlife habitat
☐ Pollution abatement
☐ Recreation and scenic attraction

2.2 Instream use created by lease. The instream use to be created is described as follows:

Mill Creek River
Tributary to Walla Walla River in the Walla Walla River Basin.

Describe the point of diversion (POD) and any associated reach(es) of the instream use being created. If possible list the reach by river mile. If no reach is identified, and there is only one POD listed on the certificate, the lease may be processed to be protected at the POD. (If more than one POD is listed on the certificate, then the POD and any associated reach(es) must be identified): See POD description in Section 1.1, supra., depending on natural conditions and emergency conditions associated with City's municipal supply.
Maximum volume in acre-feet: N/A
Rate in cfs: up to 2.5 cfs depending on natural conditions and emergency conditions associated with the City's municipal supply. The above 2.5 cfs relates to a reduction on the maximum amount the City may exercise under Certificate No. 13276 to 25.5 cfs (28 cfs Certificated - 2.5 cfs) except in emergency condition as aforenoted. The creek reach involved is between the subject water right's point of diversion in Oregon downstream (see section 1.1 supra) to the Oregon-Washington State boundary line.
(Use the section below to indicate a more restrictive period of use than allowed by the water right.)

Conditions to prevent injury, if any:

☐ None
☒ The instream flow will be allocated on a daily average basis up to the described rate from August through September 30 of each year (when available).
☐ Other (describe): _____

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If you need to enter more instream uses, please use the additional water rights form.

2.3 Term of lease. This lease shall terminate on December 31, 2013.

2.4 Flow protection. The Trustee will regulate use of water from the source, subject to prior appropriation and the agency enforcement guidance, to assure the water is delivered to the point of diversion, and through the reach past junior downstream users, so long as flow is

sufficient to meet the demand under priority date of the new instream use (see Section 2.2). As part of regulation activities the watermaster or a designee has access to the point of diversion and place of use for the water rights involved in this lease. No party is required to continuously measure the flow of the waterway described in Section 2.2.

~III~ Other Information

3.1 **Accuracy.** The Undersigned Lessor(s) and Lessee(s) declare that, to the best of their knowledge and belief, the information contained in this application is true, correct and complete. If after the lease order is signed, any information is determined to be false, the lease order may be modified or terminated. The lease only exercises the water rights being leased, for the term of the lease. It shall not be construed to overcome any claim that the water right may otherwise be subject to forfeiture for nonuse pursuant to ORS 540.610 during the period of time prior to the execution of the lease.

3.2 **Lease.** Lessor(s) and Lessee(s) agree to lease the water rights listed in Section(s) 1.5 for instream use for the term of this lease through Lessee to the Trustee, the Oregon Water Resources Department, pursuant to the provisions of ORS 537.348(2) and OAR 690-077.

3.3 **Precedent.** If a right which has been leased is later proposed to be leased again or transferred to an instream use under ORS 537.348 and OAR 690-077 a new injury review shall be required, and a prior lease shall not set a precedent for the amount of water to be leased or transferred instream.

3.4 **Suspension of original use.** During the period of the lease, the water right holder agrees to suspend use of water allowed under the subject water rights and under any water right that is supplemental to the subject water rights.

3.5 **Termination provision.**

☒ For multiyear leases, the Lessor(s) shall have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is received less then 30-days prior to the period of allowed instream use or after the period of allowed use has begun for the water right(s) being leased, water may not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur. The Department may also require:

- Written notice to the Department with original signatures;
- Consent by all parties to the lease; and/or
- Written notice to the Watermaster's office.

☐ For multiyear leases, the lessor shall not have the option of terminating the lease, without consent by all parties to the lease.

3.6 **Modification to prevent injury.** Allocation of water to the instream use described in Section 2.2 during the term of this lease is not reasonably expected to cause injury to other rights to use water from the same source. If injury is found after this lease is signed, the lease may be modified or terminated to prevent injury.

3.7 **Fees.** Pursuant to ORS 536.050, the following fee is included:

☐ $200 for an application with four or more landowners or four or more water rights.

☒ $100 for all other applications.

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Lessor #1: [signature], Nabiel Shawa City Manager Date: 2/9/2010
~~Craig Sivley P.E., Public Works Director~~, City of Walla Walla

For additional Lessors, type in space for signature and date

Lessee: _____ Date: _____

Other Attachments as Needed:
Attachment 1: Tax Lot Map. (See instructions.)
Attachment 2: Detailed map illustrating lands under subject rights to be leased; required if only part of a right is being leased instream. (See instructions.)
Attachment 3: Supporting documentation indicating why a right is valid and not subject to forfeiture even though the right has not been exercised for five or more consecutive years (required if the second box in Section 1.6 is checked).
Attachment 4: Split Season Instream Use Form

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Application for Split Season Instream Lease

[redacted]

SL-12

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Attachment 4 (Standard Leasing Form).
Attachment 5-D (Pooled Leasing Form).

The standard instream water right form or for pooled leases, the appropriate pooled lease forms, pursuant to ORS 537.348(2) and OAR 690-077 must also be filled out before a Split Season Use Instream Lease Application can be processed.

Note: Split season use lease applications must be submitted to the Department two weeks prior to water being used either for the existing purpose or for the proposed instream purpose. (OAR 690-077-0079)

1. Existing and Instream Use Periods

For the water right being leased instream, as described in Section 1.5, include monthly or partial season rate or duty limitations, if appropriate.
This section replaces the "Total volume, Rate in cfs, and Allowed period of use" portions of Section 2.2 on the standard or pooled instream leasing forms.

The water right will be used for its existing purpose from October 1 to July 31.
The water right will be used for instream use period is from August 1 to September 31

The City has agreed to reduce the maximun amount to be exercised of its 1866 priority municpal water right to 25.5 cfs (a 2.5 cfs reduction) during two months. The potentially avaliable acre feet are: _____.

	Rate (cfs)		Conversion Factor 1 cfs = 1.983471 ac-ft/day		Number of days		Duty (ac-ft)
Existing Use	2.50	*	1.983471	*	304.00	=	1507.43
use if needed		*	1.983471	*		=	0.00
use if needed		*	1.983471	*		=	0.00
Instream Use	2.50	*	1.983471	*	61	=	302.47
use if needed		*	1.983471	*		=	0.00
use if needed		*	1.983471	*		=	0.00
Total	n/a		n/a		n/a		1810.81

2. Measurement and Reporting

The water right lessor or lessee shall contact the watermaster to determine the necessary measurement and reporting requirements associated with leasing a water right.
The holders of the water rights shall measure and report the use of the existing water right and instream water right to the satisfaction of the Director, or provide for third party measurement and reporting to the satisfaction of the Director. Pursuant to ORS 537.332(3), the Department holds instream water rights in trust for the benefit of the people of the State of Oregon.

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(a) Location(s) a[redacted]ype(s) of measuring device(s): The C[redacted]s installing a new flow meter at the top of the 14.5 mile 30" transmission main near the muncipal water supply intake dam located in the closed Mill Creek watershed.

(b) Frequency of measurement: Continuously and recorded water plant

(c) Parties responsible for the respective measurements: City of Walla Walla

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