

**MASTER INTERLOCAL AGREEMENT
BETWEEN LOTT CLEAN WATER ALLIANCE AND CITY OF TUMWATER**

This **AGREEMENT** is entered into in duplicate originals between the LOTT CLEAN WATER ALLIANCE, a 501(c)(3) corporation acting as a public agency to provide wastewater resource management services (hereinafter "LOTT"), and the CITY OF TUMWATER, a municipal corporation (hereinafter "City"), pursuant to RCW 39.34.080.

WHEREAS, it is to the mutual advantage of LOTT and the City to cooperate as described herein in order to make the most efficient use of their resources to provide services and facilities within their respective Jurisdictions; and

WHEREAS, RCW 39.34.080 authorizes a public agency to contract with another public agency to perform any governmental service, activity, or undertaking that each public agency is authorized by law to perform;

NOW THEREFORE, by virtue of RCW 39.34.080 and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, **IT IS MUTUALLY AGREED AS FOLLOWS:**

**I
GENERAL**

- 1.0 It is the purpose of the Agreement to permit the parties to make the most efficient use of their resources by enabling them to cooperate on roadway and utility construction, maintenance, and repair activities by providing contractor support, staff support, equipment, and materials when available on a reimbursable basis.
- 1.1 This will be done with the understanding that the work of the owner from whom resources have been requested takes priority. This Agreement sets forth all terms and conditions agreed upon by LOTT and the City and supersedes any and all prior agreements oral or otherwise with respect to the subject matter addressed herein.

**II
DURATION**

- 2.0 This Agreement shall become effective as of the date of the last authorizing signature affixed hereto and shall remain in effect until terminated as provided for herein. Prior to becoming enforceable, this Agreement shall be executed by both parties and recorded with the Thurston County Auditor's Office or posted upon the websites or other electronically

retrievable public source as required by RCW 39.34.040.

III REQUEST FOR SERVICES

- 3.0 Each request for service shall be submitted by the authorized official or designee on behalf of each entity. Each request for service shall be in writing using the Request for Services Form, Exhibit “A”, and shall specify the particular service required, the amounts and types of labor, equipment, and material required, the location of the work, the estimated cost of the work, when the work is to be performed, and other information pertinent to the request. Upon receipt of the request, the party which has been requested to supply the service shall indicate their acceptance or rejection of the request, have the request reduced to a writing that complies with RCW 39.34 et seq. and signed by their authorized official, and return one copy to the requesting party. The authorized official for LOTT is the Executive Director and for the City of Tumwater is the City Administrator or designee. In cases of emergency, as declared in writing by the official at the requesting agency authorized to do so, the request and approval may be verbal, but must be documented in writing within 48 hours of the verbal request. In some instances, it may be necessary for one or both Parties to obtain the authorization of their respective governing body as a pre-requisite to provide services under this Agreement or, in the case of an emergency, for the governing body to review the services provided.
- 3.1 The party that accepts the request for service agrees to perform, or cause to be performed, all work and furnish, or cause to be furnished, all materials and equipment required to procure and perform the work described in the Request for Services. The work shall be procured and performed in accordance with this Agreement and all applicable city, state, and federal laws, policies, and regulations applicable to each Party.

IV PAYMENT

- 4.0 The parties to this Agreement agree that the party receiving services under this Agreement shall reimburse the party providing the services for their actual direct and related indirect costs. Upon request of the providing party, the party receiving services shall make partial payments to cover out of pocket costs incurred. These payments are not to be more frequent than once per month. It is agreed that such partial payment will not constitute agreements as to the appropriateness of any item or to the reasonableness of the cost incurred. Neither party may incur costs on behalf of the other beyond that expressed in their written agreement to perform services without first obtaining the requesting party's written consent.

- 4.1 The maximum amount payable for work to be performed under this Agreement for each jurisdiction is \$100,000 per calendar year.

V

RECORDS RETENTION AND AUDIT

- 5.0 During the progress of the work and for a period not less than six (6) years from the final date of payment, the records and accounts pertaining to the work and accounting therefore are to be kept available for inspection and audit by either party and/or the state and federal government. Copies of all records, accounts, documents, or other data pertaining to the work will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the 6-year retention period. The Parties agree that any requirements under the Washington Public Records Act and RCW 40.14 that exceed the six-year requirement described herein shall be complied with.

VI

CARE AND MAINTENANCE OF EQUIPMENT

- 6.0 The parties agree that any time a request is made for the use of equipment, the requesting party shall be responsible for the proper care, maintenance, and security of the equipment until the equipment is returned to the owner. Any damage, other than normal wear and tear, will be the responsibility of the party in possession of the equipment at the time the equipment is damaged.

VII

RIGHT OF ENTRY

- 7.0 The parties to this Agreement hereby grant and convey to each other the right of entry upon all land in which the parties have interest, within or adjacent to the right of way of the highway, road, or street for the purpose of accomplishing all work or services requested as part of this Agreement.

VIII

RELATIONSHIP OF PARTIES

- 8.0 The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party. This Agreement is for the benefit of the parties, and no third-party beneficiary relationship is intended. No separate legal entity and no joint organization are created by this

Agreement. No common budget is to be established. No personal or real property is to be jointly acquired or held.

IX HOLD HARMLESS AND INDEMNIFICATION

- 9.0 The City shall hold harmless, indemnify, and defend LOTT, its officers, officials, employees, and agents solely for third party claims relating to bodily injury, sickness or death, or real or personal property damage or destruction and loss of use thereof, including costs and attorney's fees in defense thereof, caused by or arising out of the City's negligence in the performance of its obligations under this Agreement. It is further specifically and expressly understood that the indemnification provided herein constitutes the City's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.
- 9.1 LOTT shall hold harmless, indemnify, and defend the City, its officers, officials, employees, and agents solely for third party claims relating to bodily injury, sickness or death, or real or personal property damage or destruction and loss of use thereof, including costs and attorney's fees in defense thereof, caused by or arising out of LOTT's negligence in the performance of its obligations under this Agreement. It is further specifically and expressly understood that the indemnification provided herein constitutes LOTT's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.
- 9.2 The City's obligations hereunder shall not extend to bodily injury, sickness, or death caused by or arising out of the sole negligence of LOTT, its officers, officials, employees, or agents.
- 9.3 LOTT's obligations hereunder shall not extend to bodily injury, sickness, or death caused by or arising out of the sole negligence of the City, its officers, officials, employees, or agents.
- 9.4 In the event of the concurrent negligence of the parties, the City's obligations hereunder shall apply only to the percentage of fault attributable to the City, its officers, officials, employees, or agents.
- 9.5 In the event of the concurrent negligence of the parties, LOTT's obligations hereunder shall apply only to the percentage of fault attributable to LOTT, its officers, officials, employees, or agents.
- 9.6 The provisions of this Section IX shall survive the expiration or termination of this Agreement and completion of the request for services.

X
INSURANCE

- 10.0 Both parties shall maintain Commercial General Liability or equivalent for bodily injury, personal injury, and property damage, subject to limits of not less than \$2,000,000 per loss. The general aggregate limit shall apply separately to this Agreement and be no less than \$2,000,000. Participation in a governmental self-insured risk pool shall fulfill the above stated coverage requirements. An Evidence of Coverage acknowledgement letter from the jurisdictions' risk pools will be provided to each party. Other insurance coverage that may be unique to the work performed will be included in the written agreement following the acceptance of a request to perform work, as more particularly referred to in Section III herein.
- 10.1 Both parties shall maintain workers' compensation insurance as required by Title 51 RCW and shall provide evidence of coverage to the other party upon request.
- 10.2 Both parties shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced with written notice mailed to each party.

XI
TERMINATION

- 11.0 Either party may terminate this Agreement upon 30 calendar days' prior written notice to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination. In exercising its right to termination, the Parties agree to act reasonably to minimize any costs associated with the overall project and the work specifically being undertaken pursuant to this Agreement.

XII
LEGAL RELATIONS

- 12.0 No liability shall attach to the parties by reason of entering into this Agreement except as expressly provided herein.

XIII
ADMINISTRATION AND NOTICE

- 13.0 The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for

coordinating and monitoring performance under this Agreement. Wherever written notice is required under this Agreement, such notice shall be provided to the representatives designated below. In the event such representatives are changed, the party making the change shall notify the other party.

- 13.1 The City's representative shall be the Director of Water Resources & Sustainability, 555 Israel Road SW, Tumwater, WA 98501, 360-754-4140, desmith@ci.tumwater.wa.us.
- 13.2 LOTT's representative shall be the Contract Manager, 500 Adams Street NE, Olympia, WA 98501, 360-664-2333, contracting@lottcleanwater.org.
- 13.3 A notice shall be deemed to have been validly given if:
 - a. Delivered in person to the individual designated by a party to accept delivery, to a member of the firm, to an officer of the corporation, or to an agent acting on behalf of the foregoing; or
 - b. Sent to the attention of the designated representative by United States mail, postage prepaid, to the last business address provided; or
 - c. Sent to the attention of the designated representative by email to the last email address provided.
- 13.4 Any notice required under this Agreement shall become effective three (3) calendar days following the date of deposit in the United States Postal Service or on the date of delivery for delivery in person or by email.

XIV

CHANGES, MODIFICATIONS, AND AMENDMENTS

- 14.0 This Agreement may be changed, modified, amended, or waived only by written agreement executed by the authorized officials of both parties hereto.

XV

GOVERNING LAW AND VENUE

- 15.0 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 the laws of the State of Washington both as to its interpretation and performance. Any action at law, suit in equity, or judicial proceeding arising out of this Agreement shall be instituted and maintained only in a court of competent jurisdiction in Thurston County, Washington.

**XVI
WAIVER**

- 16.0 A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

**XVII
SEVERABILITY**

- 17.0 If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

**XVIII
EQUAL OPPORTUNITY TO DRAFT**

- 18.0 The parties have participated and had an equal opportunity to participate in the drafting of this Agreement, and the Exhibits, if any, attached. No ambiguity shall be construed against any party upon a claim that such party drafted the ambiguous language.

****** SIGNATURES ON THE FOLLOWING PAGE ******

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year last signed below.

City of Tumwater

LOTT Clean Water Alliance

By: Leatta Dahlhoff

Its: Mayor

Date: _____

By: Matthew J. Kennelly, P.E.

Its: Executive Director

Date: _____

ATTEST: _____

Melody Valiant, City Clerk

ATTEST: _____

Amy Earley, Corporate Secretary

Approved as to form

Karen Kirkpatrick, City Attorney

REQUEST FOR SERVICES
EXHIBIT A
TO
MASTER INTERLOCAL AGREEMENT
BETWEEN LOTT CLEAN WATER ALLIANCE AND CITY OF TUMWATER

TITLE

SCOPE OF PROJECT

COST ESTIMATE (Itemization to be attached)

Labor	\$	
Materials	\$	
Equipment	\$	
Other	\$	
TOTAL	\$	

LOCATION OF WORK

START DATE

COMPLETION DATE

PROJECT CONTACTS

LOTT Clean Water Alliance

City of Tumwater

CONCURRENCE

LOTT Clean Water Alliance

City of Tumwater