

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF TUMWATER AND LOTT CLEAN WATER ALLIANCE  
REGARDING A PURCHASE AND SALE AGREEMENT FOR THE HENDERSON PROPERTY**

**I. RECITALS**

This Memorandum of Understanding (“MOU”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2023 by and between the City of Tumwater (“City”) and the LOTT Clean Water Alliance (“LOTT”), referred to collectively as “Parties” or “the Parties.”

**Whereas**, LOTT owns property located at 7502, 7500, 6545 Henderson Blvd. SE parcels 12711110400, 12711110401, 12711140300 (referred to herein as the Property) that was originally purchased for the purpose of siting a future reclaimed water infiltration facility; and

**Whereas**, LOTT has completed a master planning process and has determined that future infiltration facilities at this location are not necessary; and

**Whereas**, the City has need for additional water well facilities and has water utility resources to support such development; and

**Whereas**, the City has needs to acquire land for future recreational purposes, and the City and potential partners have resources to support the development of such facilities; and

**Whereas**, the City has expressed that acquisition of the Property would support these efforts and offer multiple community benefits; and

**Whereas**, the parties need sufficient time to explore the feasibility of a purchase and future land uses, including completion of an appraisal to determine property values, the viability of potable production and treatment facilities, and the exploration of potential partners related to development and operation of a community recreational facility; and

**Whereas**, it is estimated that the parties need up to twelve (12) months to complete applicable appraisals and studies; and

**Whereas**, the Parties wish to express their commitment to explore a sale of the Property provided certain conditions are met, which are generally described below; and

**Whereas**, if during the feasibility period the parties mutually desire to proceed with purchase, a purchase and sale agreement will indicate in greater detail the conditions upon which the sale of the Property will take place.

**Now, therefore**, the Parties intend by this document to memorialize steps to be taken in preparation for entering into a possible purchase and sale agreement and their understanding concerning the general conditions necessary to enter into a purchase and sale agreement as further set forth below.

**II. STEPS TO BE TAKEN ON DETERMINING FEASIBILITY OF A POSSIBLE PURCHASE AND SALE**

- A. The Parties will continue due diligence regarding the sale and purchase of the Property and the benefits provided therein.
- B. Following execution of this Agreement, LOTT shall make available to the City copies of all existing studies, reports, surveys, soils tests, reviews, correspondence with all governmental entities, environmental checklists and reports, plans, and other printed or written material (all

of which are collectively referred to as “Studies”) prepared or received by, or on behalf of, LOTT with respect to the Property.

- C. The Parties will work together in good faith to identify a mutually approved third party property appraiser. LOTT will obtain and pay for the appraisal.
- D. The Parties agree to advance internal evaluation and discussion of a possible sale with staff and their respective governing bodies and determine the desire to move forward with a purchase and sale agreement.
- E. Should the City determine ownership of the Property is desirable, the City will provide LOTT a written Letter of Intent no later than October 31, 2024, stating its interest in acquiring the Property. Within 60 days of receipt of said Letter of Intent, the LOTT Board of Directors will consider action declaring the property surplus to LOTT’s needs.
- F. The Parties will work together in good faith with the mutual goal of defining an acceptable sales price and financing plan acceptable to both Parties, as a basis for a possible purchase and sale agreement for the Property.
- G. The Parties will work together in good faith to develop a mutually acceptable agreement for access to the Property to facilitate the City’s evaluation of the Property. This MOU does not grant access to the Property.

### **III. GENERAL CONDITIONS FOR PURCHASE AND SALE**

- A. Term and Amendment. This MOU anticipates the Parties will determine the feasibility of the intended use of the property no later than October 31, 2024. If a purchase and sale agreement for the acquisition of the Property is not completed by or before January 31, 2025, this MOU will terminate. The Parties may mutually agree to extend this MOU beyond this date. Any amendment to this MOU must be in writing and mutually agreed to by both Parties.
- B. Legal and Regulatory Requirements. The Parties agree that any purchase and sale agreement arising from this Memorandum must be in accordance with all applicable laws and regulations, including those from the Washington State Auditor’s Office. The purchase and sale agreement will account for the fair market value of the property and ensure that LOTT is fully compensated for the value of property. The Parties further acknowledge there may be unique factors involving this Property not specifically considered in the appraisal under Section II B of this agreement which may impact the value of the Property.
- C. Consideration. The Parties will work together to determine the form and timing of consideration to be received by LOTT for the Property. This consideration could involve both cash and non-cash consideration and could be transferred to LOTT at any point from the date the purchase and sale agreement is executed up to five (5) years thereafter, subject to legal and regulatory requirements. Any consideration that is exchanged after the date of the purchase and sale agreement shall also include applicable interest, interest at a rate sufficient to ensure full value is received by LOTT for the Property.
- D. Easement. LOTT may desire to establish an underground easement on the property for a future utility line. The Parties agree to work to establish one or more easements as necessary to meet LOTT’s current and future needs.

- E. Limitations. During the term of this MOU, LOTT shall not dispose of the Property to any entity other than the City without the written consent of the City, except as otherwise provided herein. LOTT may enter into a secondary agreement with another entity should the agreement with the City not be consummated.
- F. Authority. Each Party and each individual signing on behalf of each Party, hereby represents and warrants to the other that it has full power and authority to enter into this MOU and that its execution, delivery, and performance of this MOU has been fully authorized and approved, and that no further approvals or consents are required by either Party to enter into this MOU.
- G. Non-Binding Understanding. This MOU is intended only as a memorandum of understanding that will guide the acquisition of the Property by the Parties. Except for Section III E, Limitations, it does not create a legally enforceable agreement. This MOU is not in itself an offer to sell or a commitment to purchase the Property. Rather, it is an expression of the Parties' intent to enter into negotiations for such a purchase.

**I. SIGNATURES**

**LOTT CLEAN WATER ALLIANCE**

By: \_\_\_\_\_  
Matthew J. Kennelly, PE  
Executive Director

Date: \_\_\_\_\_

**CITY OF TUMWATER**

By: \_\_\_\_\_  
Debbie Sullivan, Mayor

Date: \_\_\_\_\_

**Attest:**

**Approved as to Form:**

By: \_\_\_\_\_  
Karen Kirkpatrick, City Attorney

**EXHIBIT A**  
**General Property Boundaries**



- PARCEL A:
- 12711140300
  - 9.66 Acres

- PARCEL B:
- 12711110401
  - 0.55 Acres

- PARCEL C:
- 12711140300
  - 2.34 Acres