

**GENERAL INTERLOCAL AGREEMENT
BETWEEN THE LOTT CLEAN WATER ALLIANCE,
THURSTON COUNTY AND THE CITIES OF
LACEY, OLYMPIA AND TUMWATER
FOR DISTRIBUTION AND USE OF RECLAIMED WATER**

This agreement (“General Agreement”) is entered into as of the date set forth in Section 10 below by and between the LOTT Clean Water Alliance (“LOTT”), Thurston County, and the Cities of Lacey, Olympia, and Tumwater, each a “Party” and together referred to as the “Parties.”

1. RECITALS

WHEREAS:

- 1.1 The Cities of Lacey, Olympia, Tumwater, and Thurston County (the “LOTT Partners”) have for over 40 years cooperated successfully in planning, financing, constructing, and operating joint wastewater treatment and discharge facilities and services; and
- 1.2 In 2000, the LOTT Partners entered the Interlocal Cooperation Act Agreement for Wastewater Management by the LOTT Wastewater Alliance (“Interlocal Cooperation Act Agreement”) to enable further cooperative actions to develop additional capacity by and through LOTT, a nonprofit corporation created, funded, and controlled by the LOTT Partners; and
- 1.3 Pursuant to the Interlocal Cooperation Act Agreement, LOTT is implementing the LOTT Wastewater Resource Management Plan (“WRMP”) including development of reclaimed water and groundwater recharge facilities located throughout the LOTT service area; and
- 1.4 LOTT manages the regional wastewater treatment system for the benefit of the LOTT Partners and the ratepayers; and
- 1.5 LOTT is the owner and operator of reclaimed water facilities that produce Class A reclaimed water and plans to build additional reclaimed water capacity in the future; and
- 1.6 In RCW 90.46.005, the Washington State Legislature encourages the use of reclaimed water “to replace potable water in nonpotable applications, to supplement existing surface and ground water supplies, and to assist in meeting the future water requirements of the state”; and

- 1.7 The Legislature further finds, in RCW 90.46.005, that “use of reclaimed water constitutes the development of new basic water supplies needed for future generations”; and
- 1.8 LOTT has been issued a National Pollution Discharge Elimination System (NPDES) Permit for the Budd Inlet Wastewater and Reclaimed Water Plant and a State Reclaimed Water Permit for the Martin Way Reclaimed Water Plant by the State of Washington. Pursuant to RCW 90.46 and WAC 173-219, these permits authorize LOTT to produce Class A reclaimed water; and
- 1.9 The LOTT Partners, with the exception of Thurston County, operate municipal water utilities that supply water that is ultimately discharged to the LOTT system and that will be reclaimed and made available for beneficial use in the public interest; Thurston County may operate a water utility in the future; and
- 1.10 This General Agreement will effectuate the purposes of the Reclaimed Water Act, Ch. 90.46 RCW, implement the Reclaimed Water Rule (WAC 173-219) developed by the Washington State Departments of Health and Ecology pursuant to the Reclaimed Water Act, and implement the NPDES and State Reclaimed Water Permits issued to LOTT by enabling the LOTT Partners to replace the use of potable water for non-potable applications; and
- 1.11 LOTT and the LOTT Partners will coordinate on water supply planning as required by the Reclaimed Water Act (RCW 90.46.120); and
- 1.12 LOTT has conducted extensive environmental review under the State Environmental Policy Act of the reclaimed water project including issuance of a Wastewater Resource Management Plan Final Programmatic Environmental Impact Statement dated December 1996, a Final Supplemental Environmental Impact Statement dated November 1998, and environmental evaluations for individual facilities; and
- 1.13 The LOTT Partners recognize LOTT, as the permittee, has responsibilities for ensuring that reclaimed water treatment, water quality, monitoring, reporting, recordkeeping, uses, and use locations meet the terms and conditions of the NPDES and State Reclaimed Water Permits; and
- 1.14 LOTT and the LOTT Partners have determined that it is in the public interest to enter into a general agreement to establish policies and provide a framework for implementing distribution and use of reclaimed water and conserving the LOTT Partners’ potable water supplies; and
- 1.15 Pursuant to Chapter 39.34 RCW, the Parties are authorized to jointly exercise the powers, privileges, and authority described herein. The Parties agree that they intend to act jointly to accomplish the purposes of this General Agreement. No

separate legal entity is created by this General Agreement. LOTT will serve as administrative lead.

2. DEFINITIONS

- 2.1 “Class A Reclaimed Water” means reclaimed water that meets State Class A criteria established in the Reclaimed Water Rule (WAC 173-219), as it may be amended from time to time.
- 2.2 “Delivery Point” means the physical location(s) where LOTT transfers reclaimed water to a LOTT Partner for distribution or use. The term includes any points of withdrawal or diversion identified in the future by the Parties to recover reclaimed water stored underground and/or conveyed along a surface water body.
- 2.3 “End User” means a person or entity that puts reclaimed water to one or more End Uses. End Users may include LOTT, a LOTT Partner that uses reclaimed water, or a person or entity that receives reclaimed water from a LOTT Partner.
- 2.4 “End User Agreement” means an agreement between a LOTT Partner and an End User concerning terms and conditions of reclaimed water supply and use. If the End User is the LOTT Partner, the terms and conditions of reclaimed water supply and use are set forth in the Supply Agreement between LOTT and the LOTT Partner and a separate End User agreement for that LOTT Partner’s use is not required.
- 2.5 “End Uses” means the beneficial uses for which reclaimed water may be used consistent with LOTT’s NPDES and State Reclaimed Water Permits and the Reclaimed Water Rule including, but not limited to, commercial and industrial uses, irrigation, groundwater recharge, stream flow augmentation, and other environmental enhancement or restoration.
- 2.6 “Increment” means any substantive new volume of reclaimed water added to the system, through design and construction of new treatment capacity or through other means, such as operational adjustments, and includes initial development of each new Class A Reclaimed Water facility or each addition of new reclaimed water capacity to a previously built facility.
- 2.7 “In-Ground Stored Water” means reclaimed water stored underground by recharge, surface percolation, or otherwise that is intended for recovery and beneficial use. This is also referred to as Aquifer Storage and Recovery.
- 2.8 “National Pollution Discharge Elimination System Permit or NPDES Permit” means the wastewater permit use authority issued by the state, under federal guidelines. The reclaimed water use permit authority of the state is included in the

same permit for LOTT's NPDES Permit No. WA0037061, which governs the Budd Inlet Treatment Plant and the Budd Inlet Reclaimed Water Plant.

- 2.9 "Net Reuse Capacity" means the amount of reclaimed water from each increment available for reuse by the Partners, generally determined by the estimated production value, minus LOTT reuse needs. Net Reuse Capacity is intended to reflect the actual available volume, rather than the future planned volume.
- 2.10 "Reclaimed Water Distribution Agreement" means an agreement among the Parties that distributes available reclaimed water among the LOTT Partners consistent with the Reclaimed Water Distribution Methodology attached hereto as Exhibit A.
- 2.11 "Reclaimed Water Rule" means the rule given in WAC 173-219, and which governs the permitting, production, use, and distribution of reclaimed water in Washington State.
- 2.12 "State Reclaimed Water Permit" means the reclaimed water use permit authority issued by the State. The State Reclaimed Water Permit No. ST 6206 governs the Martin Way Reclaimed Water Plant. Additional State Reclaimed Water Permits may be issued to LOTT for future reclaimed water facilities.
- 2.13 "Supply Agreement" means an agreement between LOTT and a LOTT Partner that provides for LOTT to supply the Partner with reclaimed water from a LOTT reclaimed water production facility under terms and conditions consistent with this General Agreement.

3. REGIONAL RECLAIMED WATER POLICIES

- 3.1 LOTT's Permits, Responsibility, and Rights. The Parties agree that LOTT's primary responsibility is to provide adequate and reliable wastewater treatment and discharge services and system capacity, consistent with the terms of the NPDES and State Reclaimed Water Permits. In implementing this General Agreement, the Parties agree that compliance with LOTT's NPDES and State Reclaimed Water Permits takes precedence over supply and beneficial use. To the extent feasible, LOTT will specify in Supply Agreements the nature of the rights it reserves to itself for the purpose of compliance with its NPDES and State Reclaimed Water Permits.
- 3.2 Beneficial Use Goal. Subject to LOTT's NPDES and State Reclaimed Water Permits, the Reclaimed Water Rule, and regulatory compliance, the Parties agree that the overriding policy goal of this General Agreement is beneficial use of reclaimed water, including conservation and mitigation of potable water supplies, recharge of aquifers, and other environmental enhancements. Accordingly, use of reclaimed water takes precedence over generation of revenue. The LOTT

Partners receiving reclaimed water will demonstrate a good faith commitment to use the water and facilitate distribution of the water in the best interests of their communities.

- 3.3 **Region-Wide Accessibility Goal.** Consistent with the Wastewater Resource Management Plan and subsequent LOTT Capital Improvement Programs, the Parties reaffirm their intent to make reclaimed water available and accessible to all of the LOTT Partners for beneficial use. Prior to authorizing the construction of each Increment, the LOTT Board of Directors shall consider treatment capacity needs, conveyance capacity needs, timing considerations, cost-benefit, availability of committed or clearly identified needs for the water, impact on future facility requirements, alternative methods for achieving region-wide access, and other policy considerations.
- 3.4 **Intent to Preserve Exclusive Rights.** For any reclaimed water that is not immediately taken at a Delivery Point by a LOTT Partner, the Parties intend to preserve and maintain LOTT's exclusive rights to that reclaimed water as a future water resource and for the benefit of the LOTT Partners. Among other steps, the Parties intend to pursue programs or projects that result in groundwater replenishment for the purpose of water rights mitigation and/or wetland/streamflow augmentation for the purpose of water rights mitigation or watershed enhancement. The Parties intend for LOTT and/or LOTT Partner(s) to obtain mitigation or other credits for such efforts where appropriate. The Parties may also pursue projects for In-Ground Stored Water/Aquifer Storage and Recovery.
- 3.5 **Supply Roles and Responsibilities.** Except for use of reclaimed water by LOTT, as described in this section, the Parties intend for the LOTT Partners to serve as the suppliers and to regulate the delivery and use of reclaimed water to and by End Users. LOTT will reserve water needed for its own uses at LOTT facilities, uses intended to mitigate permit provisions and water quality requirements, demonstration projects, uses that are not feasible for the LOTT Partners to serve, and special projects approved by the LOTT Board of Directors. LOTT will not serve as a retail supplier of reclaimed water to any End Users unless requested by a LOTT Partner or unless such supply is needed for permit or water quality mitigation purposes. The Parties intend for the LOTT Partners to adopt reclaimed water ordinances, as described in section 5a of this General Agreement, to govern the supply of reclaimed water to End Users.
- 3.6 **Distribution Responsibility and Flexibility.** The Parties intend for the LOTT Partners receiving reclaimed water supply to take the lead roles in developing distribution programs and facilities and, in doing so, to assume responsibility for meeting the terms and conditions of LOTT's State Reclaimed Water Permits as they apply to distribution and End Use of the water. The Parties recognize that specific End Uses or patterns of End Uses may vary among the LOTT Partners,

and that two or more Parties may join together for distribution programs and facilities that provide mutual benefit.

- 3.7 LOTT Partners as End Users. The Parties further intend that the LOTT Partners may also use reclaimed water for their own purposes, consistent with the End Uses and End User requirements of the Reclaimed Water Rule and LOTT's NPDES and State Reclaimed Water Permits.
- 3.8 Involvement with End Users. The Parties intend for LOTT to become involved with the LOTT Partners' End User customers only to provide technical or other assistance at the request of a LOTT Partner or as a last resort to ensure permit compliance.

4. SUPPLY OF RECLAIMED WATER

- 4.1 Supply Agreements. For each reclaimed water production facility built by LOTT, the Parties intend for LOTT to enter a Supply Agreement with each participating LOTT Partner regarding reclaimed water produced at that facility. Supply Agreements will contain provisions that further common policy and regional accessibility goals (set forth in sections 3.2 and 3.3 of this General Agreement), and enable provision of reclaimed water service to customers across jurisdictional boundaries on generally consistent terms and conditions.
- 4.2 Reclaimed Water Distribution Methodology. The Parties agree that the primary responsibility for water supply planning and distributing available reclaimed water to End Users rests with the LOTT Partners. Accordingly, the LOTT Partners will jointly negotiate the distribution of reclaimed water available from each LOTT facility, as prescribed in the Reclaimed Water Distribution Methodology attached hereto as Exhibit A and incorporated herein by reference. The Parties shall execute binding Reclaimed Water Distribution Agreements documenting negotiated distributions or be bound by the fallback distribution percentages as prescribed in Exhibit A.
- 4.3 LOTT Uses. With respect to beneficial use and supply of reclaimed water, the Parties agree that use by LOTT has priority over supply of reclaimed water to the LOTT Partners in event of limited supply, subject to the specific provisions of a Supply Agreement concerning quantities of water for LOTT's use and for distribution or use by LOTT Partners.
- 4.4 LOTT Partner Supplies. LOTT agrees that it will provide Class A Reclaimed Water to one or more LOTT Partner(s) under terms and conditions specified in Supply Agreements, subject to terms and conditions that ensure full and continuous compliance with LOTT's NPDES permit and State Reclaimed Water Permits, the Reclaimed Water Rule, and other applicable law.

4.5 **Supply Responsibilities.** A Supply Agreement shall specify responsibilities for the reclaimed water production and distribution according to the following general principles.

(a) **LOTT Responsibilities.** LOTT shall maintain control over, and be responsible for, all facilities and activities relating to the production of reclaimed water and distribution to Delivery Points or LOTT-owned use sites including groundwater recharge basins to ensure that reclaimed water facilities operate as approved by the Washington Departments of Health and Ecology. LOTT's responsibility for distribution of the reclaimed water, as to its quality (except as noted in subsection 4.5(b) below), disposition, or otherwise, ends at the Delivery Point(s).

(b) **LOTT Partner Responsibilities.** Each LOTT Partner's responsibility for distribution of the reclaimed water, as to its quality (to the extent altered while under direct control of the LOTT Partner), disposition, or otherwise, begins at the Delivery Point(s). The LOTT Partners shall maintain control over, and be responsible for, all facilities and activities relating to the distribution of the reclaimed water to their End Users or Partner-owned use sites including groundwater recharge basins.

4.6 **Terms of Distribution.** A Supply Agreement will provide for the terms of use and distribution of the reclaimed water by the LOTT Partners. A Supply Agreement will also provide for LOTT to supply and a LOTT Partner to obtain reclaimed water from a LOTT facility.

4.7 **Construction and Funding Responsibilities.** For a particular reclaimed water facility or project, LOTT will construct and fund LOTT facilities and the LOTT Partners will construct and fund their respective facilities. This General Agreement shall not preclude future negotiations or considerations among the Parties with regard to funding or construction responsibilities for development of reclaimed water supply or distribution of reclaimed water.

5. SALE TO END USERS

Pursuant to a Supply Agreement, the Parties agree that a LOTT Partner utility may sell reclaimed water received from LOTT to any of its End User customers under the following additional conditions.

(a) **Reclaimed Water Ordinance.** The City Council or Board of Commissioners of the LOTT Partner has adopted a reclaimed water ordinance providing for reclaimed water service to End Users, the lawful use of reclaimed water, and enforcement authority through service termination, penalties, and other appropriate means. This ordinance shall

not include any provision in conflict with requirements in the LOTT NPDES or State Reclaimed Water Permits, or Reclaimed Water Rule.

- (b) End User Agreement. The End User has signed a binding reclaimed water End User Agreement with the LOTT Partner utility. The Parties intend for the LOTT Partners' End User Agreements to be materially consistent with this General Agreement and the Supply Agreements and as to permit and regulatory compliance, and the form of the End User Agreement will be attached to the reclaimed water Supply Agreement between LOTT and the LOTT Partner. The binding reclaimed water service agreement shall set forth terms and conditions including legal rights and responsibilities; regulatory compliance provisions required by the Washington State Departments of Health or Ecology; provisions enabling enforcement action as necessary to ensure regulatory compliance; and other necessary or appropriate terms and conditions.

6. SHARING OF INFORMATION

The Parties agree, to the fullest extent permitted by law, to exchange information about all aspects of reclaimed water programs and projects including but not limited to operations, maintenance, customer comments, metering data, water quality analyses, and regulatory compliance.

7. POLICY COORDINATION

The Parties recognize an ongoing need to cooperatively address reclaimed water policy, and distribution and use issues on a regional basis. The LOTT Technical Sub-Committee (TSC) will be responsible for assuring that issues are addressed on a timely and coordinated basis. To accomplish that goal, the TSC may choose to appoint a subcommittee to address reclaimed water matters and make recommendations for TSC consideration. As needed, the TSC will propose policies, agreements and/or other actions for referral to the LOTT Board of Directors. For policy recommendations that affect all the Parties, the LOTT Board of Directors may make recommendations to the LOTT Partner jurisdictions. LOTT shall have the responsibility of coordinating the Committee's activities.

8. DISPUTE RESOLUTION

Each Party shall negotiate in good faith and use its best efforts to resolve any dispute which may arise. If a dispute cannot be resolved initially by designated representatives for each Party, the designated representatives shall prepare a joint statement describing the dispute and refer the dispute to the TSC. If the dispute is not resolved after consultation with the TSC, then the designated representatives shall refer the dispute to

the LOTT Executive Director, the City Managers, and the County Chief Administrative Officer. These officials shall meet and confer regarding the issue. If they are unable to resolve the dispute, then the designated representatives shall bring the matter before the LOTT Board. At a Board meeting, the LOTT Board shall consider the issues and attempt to resolve the dispute. Only upon failure to resolve the dispute through such negotiations may a Party institute legal action.

9. INDEMNIFICATION

To the maximum extent permitted by law, each Party shall protect, defend, indemnify, and hold harmless each other Party and their officials and employees from and against all claims, demands, suits, actions, costs, damages, liability, or loss of any kind whatsoever arising from the acts or omissions of the indemnifying Party and its officials, employees, agents, and contractors. The indemnifying Party specifically assumes the defense of actions brought by its own employees against the other Parties and for that purpose the indemnifying Party specifically waives, insofar as it defends another party, any immunity under the Worker's Compensation Act, RCW Title 51. The indemnifying Party recognizes that this waiver was the subject of mutual negotiation and is expressly entered into pursuant to the provisions of RCW 4.24.115, if applicable. In the case of joint negligence, any damages allowed shall be levied in proportion to the percentage of negligence attributed to each Party. This indemnification shall survive the termination of this General Agreement.

10. TERM OF AGREEMENT & WITHDRAWAL

This General Agreement shall become effective on the first date when all of the following events have occurred: i) it has been duly executed by all of the Parties; ii) it has been filed with the Thurston County Auditor pursuant to RCW 39.34.040; and iii) it has been approved by the State Departments of Health and Ecology pursuant to RCW 39.34.050. The term of this General Agreement shall commence on the effective date and remain in effect until terminated by action of the Parties. LOTT may not withdraw from this General Agreement. A LOTT Partner may withdraw from this General Agreement after giving 180 days written notice to the other Parties. A LOTT Partner may not withdraw from this General Agreement without also withdrawing from (or other termination of) any Supply Agreements then in effect to which that Partner is a party. When a LOTT Partner withdraws from this General Agreement, the remaining Parties will promptly meet and negotiate the disposition of the withdrawing LOTT Partner's share under the reclaimed water distribution methodology (Exhibit A).

11. MISCELLANEOUS

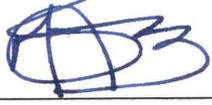
11.1 This General Agreement shall be governed by the laws of the State of Washington. The exclusive jurisdiction and venue for any lawsuit between the

Partners arising out of this General Agreement shall be in Thurston County Superior Court.

- 11.2 The Parties expressly do not intend to create any right, obligation, or liability, or promise any performance, to any third party. The Parties have not created any right for any third party to enforce this General Agreement.
- 11.3 It is the belief of the Parties that all provisions of this General Agreement are lawful. If any covenant or provision of this General Agreement shall be finally adjudicated by a court of competent jurisdiction to be invalid or unenforceable, such adjudication shall not affect the validity, obligation or performance of any other covenant or provision, or part thereof, which in itself is valid if such remainder conforms to the terms and requirements of applicable law and the intent of this General Agreement. In such event, the Parties shall enter into immediate negotiations for the purpose of arriving at a mutually satisfactory replacement of such covenant or provision, or renegotiation of the terms of the General Agreement.
- 11.4 Waiver of any breach of any provision of this General Agreement shall not be deemed to be a waiver of any prior or subsequent breach, and shall not be construed to be a modification of this General Agreement.
- 11.5 This General Agreement shall be binding on a Party's assigns and successors. A Party may not assign its rights or delegate its duties under this General Agreement in any respect without the written consent of the other Parties.
- 11.6 This General Agreement embodies the Parties' entire agreement on the issues covered by it, except as supplemented or modified by subsequent written agreements signed by all of the Parties. All prior negotiations and draft written agreements are merged into and superseded by this General Agreement.

IN WITNESS WHEREOF, each Party has caused this General Agreement to be signed by its duly authorized officer or representative as of the date set forth below its signature.

LOTT Clean Water Alliance:

By 

Its EXECUTIVE DIRECTOR

Date: 8/13/2020

Approved as to form:

By  WS 8016320

City of Lacey:

By Long Wood FOR

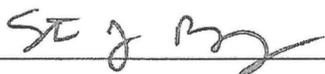
Its: CITY MANAGER

Date: 7/12/2020

Approved as to form:

By  for David Schneider

City of Olympia:

By 

Its: Interim City Manager

Date: 3/24/20

Approved as to form:

By 

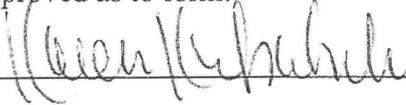
City of Tumwater:

By 

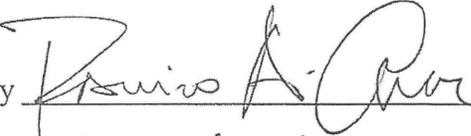
Its: Mayor

Date: 5/13/2020

Approved as to form:

By 

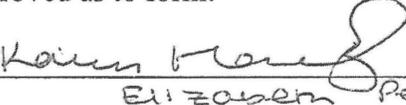
Thurston County:

By 

Its: COUNTY MANAGER

Date: 5/7/2020

Approved as to form:

By  for Elizabeth Petrich