

RECLAIMED WATER SUPPLY AGREEMENT
BETWEEN THE LOTT CLEAN WATER ALLIANCE
AND THE CITY OF TUMWATER
REGARDING THE BUDD INLET RECLAIMED WATER PLANT

This agreement (“Supply Agreement”) supersedes the Supply Agreement of April 2015 and is entered into as of the date of the latest signature below by and between the LOTT Clean Water Alliance (“LOTT”) and the City of Tumwater (“City”) each a “Party” and together referred to as the “Parties”.

1. RECITALS

WHEREAS:

- 1.1 LOTT owns and operates the Budd Inlet Reclaimed Water Plant, a municipal reclaimed water plant that generates Class A Reclaimed Water. LOTT operates the facility and generates reclaimed water under the requirements of chapter 173-219 of the Washington Administrative Code (“Reclaimed Water Rule”) and National Pollution Discharge Elimination System Permit No. WA 0037061 issued to LOTT by the Washington State Department of Ecology (“NPDES Permit”); and
- 1.2 LOTT and the LOTT Partners (the Cities of Lacey, Olympia, and Tumwater, and Thurston County) entered into the General Interlocal Agreement for Distribution and Use of Reclaimed Water, dated January 16, 2004, (“General Agreement”), and updated on March 24, 2020 [date], to provide a regional framework for distribution and use of reclaimed water; and
- 1.3 Exhibit A of the General Agreement is the Reclaimed Water Distribution Methodology which defines a process for distribution of reclaimed water among the four LOTT Partner jurisdictions; and
- 1.4 The LOTT Partner representatives completed negotiations for distribution of planned Increments of reclaimed water from LOTT reclaimed water facilities in 2004 and 2018, consistent with the Reclaimed Water Distribution Methodology; and
- 1.5 LOTT and the Cities of Olympia and Tumwater jointly developed the document Reclaimed Water Coordination: Communication Procedures (“Communications Objectives Document”), dated July 23, 2019, for reclaimed water distributed from the Budd Inlet Reclaimed Water Plant, and this document may be revised over time through mutual agreement of the Parties; and

- 1.6 The City of Olympia and the City of Tumwater entered into a Memorandum of Understanding, dated April 17, 2015, wherein the City of Olympia granted the City of Tumwater use of up to 400,000 gallons per day of Olympia's unused reclaimed water allocation; and
- 1.7 The City plans to adopt an ordinance that governs the supply of reclaimed water to End Use customers.

NOW, THEREFORE, in consideration of the recitals and the mutual promises and covenants contained herein, LOTT agrees to supply and the City agrees to use and distribute reclaimed water on the terms and conditions set forth herein.

2. RELATIONSHIP TO GENERAL AGREEMENT

- 2.1 LOTT and the City enter into this Supply Agreement to implement the General Agreement, and they intend for this Supply Agreement to be performed and interpreted consistent with the provisions of the General Agreement, which is incorporated herein by reference.
- 2.2 Definitions. Capitalized terms in this Supply Agreement have the same meanings as set forth in the General Agreement. In addition, the term "Reclaimed Water Plant" means the Budd Inlet Reclaimed Water Plant, a municipal wastewater treatment and reclaimed water plant that generates Class A Reclaimed Water.

3. SUPPLY OF RECLAIMED WATER

- 3.1 LOTT agrees to deliver Class A Reclaimed Water to the City on the condition that all uses are in full and continuous compliance with the Reclaimed Water Rule, other applicable state, federal or local regulations, and the conditions in LOTT's NPDES Permit.
- 3.2 LOTT warrants it shall deliver Class A Reclaimed Water, as defined in the Reclaimed Water Rule and in compliance with LOTT's NPDES Permit. LOTT makes no further express or implied warranties whatsoever as to the reclaimed water supplied under this Supply Agreement.
- 3.3 Consistent with the Reclaimed Water Distribution Methodology established in the General Agreement and Reclaimed Water Distribution Agreement No. 2 included as Exhibit A hereto, as amended by a Memorandum of Understanding Regarding Interim Reallocation of Reclaimed Water Supply from City of Olympia to City of Tumwater, reclaimed water produced at the Reclaimed Water Plant will be made available as follows:

- (a) LOTT reserves up to 770,000 gallons per day of the reclaimed water produced at the Reclaimed Water Plant for its own use.
 - (b) Subject to available remaining supply of reclaimed water, LOTT shall make available up to 650,000 gallons per day, of reclaimed water to the City at the Delivery Point(s) except when temporary interruptions in service occur due to circumstances described in section 4.4 of this agreement. At its option, the City may take some, all or none of the above quantity of reclaimed water.
 - (c) Quantities are subject to adjustment as new Increments of reclaimed water treatment capacity are added to the LOTT system or the distribution among LOTT Partners is renegotiated as set forth in the General Agreement.
- 3.4 The volume of reclaimed water produced at the Reclaimed Water Plant may be adjusted to correspond to actual demand up to the amounts specified in Sections 3.3(a) and 3.3(b) herein. Reclaimed water not otherwise used or distributed by the City may be sent through LOTT's outfall into Budd Inlet, returned to the treatment system, discharged to groundwater recharge basins, or used by LOTT in addition to the volume provided in paragraph 3.3(a) herein. However, such temporary disposition does not constitute a permanent relinquishment by the City.

4. CONDITIONS OF RECLAIMED WATER SUPPLY

- 4.1 The Parties agree that LOTT's primary responsibility is to provide wastewater treatment and discharge services and capacity consistent with the terms of LOTT's NPDES Permit. In carrying out this Supply Agreement, the Parties agree that compliance with LOTT's NPDES Permit is the primary interest and that supply and beneficial use are a secondary interest.
- 4.2 The Parties agree that use by LOTT stipulated in this Supply Agreement has priority over supply of reclaimed water to the City under this Agreement but that LOTT shall in good faith to the best of its ability provide reclaimed water to the City as stipulated in section 3.3 of this Agreement.
- (a) In the event of a limited supply of reclaimed water that results in conflicting demand for the available water, the Parties will work together to evaluate options and determine a course of action for managing the shortage. The course of action will be formalized in a Letter of Agreement, and signed by the Technical Sub-Committee.
- 4.3 The Parties shall in good faith, to the best of their ability, abide by the coordination, communication, and data sharing procedures outlined in the Communications Objectives Document.

4.4 LOTT shall in good faith provide reclaimed water to the City without interruption to the best of its ability, and the City shall in good faith maintain and operate its system to the best of its ability. Temporary interruptions and limitations may occur and will be communicated to the City as soon as is practicable, per the Communications Objectives Document. Additionally, the Parties understand and agree that, with no liability or penalty to any Party, there may be temporary interruptions or limitations in supply, service, or acceptance of reclaimed water due to the following events:

- (a) Unavailability or limited quantities of reclaimed water;
- (b) Emergencies and otherwise unforeseen situations requiring repair or replacement of Reclaimed Water Plant or conveyance system equipment;
- (c) Routine repair, maintenance, or replacement of Reclaimed Water Plant or conveyance system equipment;
- (d) The need for LOTT, in its professional judgement, to take extraordinary action to comply with its NPDES Permit (for example and without limitation, to address treatment upsets or in response to violations of permit conditions by the City and/or End Users);
- (e) As a result of regulatory or judicial orders; or
- (f) Other circumstances beyond the control of a Party.

If the performance by any Party is prevented or delayed by any of the foregoing events, the Party shall have a reasonable period of time after each such event to resume performance under this Agreement. When possible, planned service interruptions will be scheduled by LOTT to avoid occurrences during the irrigation season or other time periods critical to users. In the event of a planned interruption of flow, LOTT will provide notice of the interruption, including its cause and expected duration, as far in advance as possible under the circumstances, per the procedures established in the Communications Objectives Document.

5. DESCRIPTION OF FACILITIES

- 5.1 LOTT's Facilities. LOTT owns, operates and maintains the Reclaimed Water Plant and all associated facilities up to the Delivery Point(s).
- 5.2 City's Facilities. The City owns, operates, and maintains all facilities on the downstream side of the Delivery Point(s), up to and including the End Users' water meters.

6. RESPONSIBILITY FOR PRODUCTION, DISTRIBUTION AND USE OF RECLAIMED WATER

Consistent with Washington State requirements, the Parties shall have the following responsibilities for the reclaimed water produced, distributed, and used pursuant to this Agreement.

- 6.1 **Production.** LOTT shall maintain control over, and be responsible for, all facilities and activities relating to the production of reclaimed water and conveyance of reclaimed water to the Delivery Point(s) to ensure that the Reclaimed Water Plant operates as approved by the Washington Departments of Health and Ecology. LOTT's responsibility for the reclaimed water made available to the City, as to production reliability requirements, reclaimed water quality, disposition, or otherwise, shall end at the Delivery Point(s).
- 6.2 **Distribution.** The City shall maintain control over, and be responsible for, all of its facilities and activities relating to the distribution of the reclaimed water once it passes the Delivery Point(s). The City shall ensure that its distribution system and End Uses are constructed, operated and maintained in compliance with the Reclaimed Water Rule, other applicable state, federal and local regulations, and the conditions of LOTT's NPDES Permit. The City's responsibility for the reclaimed water as to its quality, disposition, or otherwise, shall begin at the Delivery Point(s).
- 6.3 **Connection to LOTT Facilities.** All facilities to be connected directly to LOTT reclaimed water transmission lines or other LOTT reclaimed water facilities by the City are subject to LOTT's review and approval prior to installation.
- 6.4 **Disconnection from LOTT Facilities.** If service is discontinued from any Delivery Point or this Agreement is terminated for any reason, the City will ensure proper abandonment or disconnection of its facilities from LOTT facilities. The City shall notify LOTT of such abandonment or disconnection.
- 6.5 **Inspection.** Consistent with LOTT's obligations under its NPDES Permit, the City shall allow an authorized representative of LOTT or of the Washington State Departments of Health or Ecology, upon the presentation of credentials:
 - (a) To enter upon the premises where reclaimed water is distributed or used under this agreement; or
 - (b) To inspect at reasonable times any facilities, equipment, meters, records, or premises involved in the distribution and use of the reclaimed water under this agreement, and to take samples of the water or soil, and make copies of records.

6.6 Enforcement. In the event that the City as distributor or End User, or other End Users do not comply with conditions of LOTT's NPDES Permit, the Reclaimed Water Rule, or other applicable local, state, or federal regulations, LOTT may take enforcement actions including:

- (a) Temporarily discontinuing the supply of reclaimed water;
- (b) Issuing specific remedial actions necessary to ensure compliance;
- (c) In cases where it is not possible to resolve the issue and ensure compliance, requiring permanent disconnection of the use from the distribution system.

7. SALE TO END USE CUSTOMER

7.1 The City may sell or otherwise distribute reclaimed water supplied from LOTT to any of its End Users for those purposes authorized in the NPDES Permit or other uses as additionally approved by the Washington State Departments of Health and Ecology.

7.2 The City plans to adopt an ordinance that governs the supply of reclaimed water by the city to End Users. The Parties intend for the City to serve as the supplier and to regulate the delivery and use of reclaimed water to and by its End Users. The Parties intend for LOTT to become involved with End Users only as necessary to provide technical or other assistance at the request of a LOTT Partner, or as a last resort to ensure permit compliance.

7.3 The City may sell or otherwise distribute reclaimed water supplied from LOTT to an End User only where a binding End User Agreement exists between the City and the End User. The End User Agreement shall be substantially and materially in the form set out in Exhibit B to this Agreement, as approved by the Washington State Departments of Ecology and Health. Any changes in the End User Agreement must be approved in advance by LOTT. If the End User is the LOTT Partner, the terms and conditions of reclaimed water supply and use are set forth in this Supply Agreement and a separate End User Agreement for the LOTT Partner's use is not required.

7.4 The City shall maintain all End User Agreements for the duration of LOTT's NPDES Permit, and shall provide copies of all new or revised End User Agreements to LOTT to meet annual reporting requirements of the Departments of Health and Ecology.

8. DESIGNATED REPRESENTATIVES AND NOTICES

- 8.1 To facilitate communication between the Parties and cooperative implementation of this Agreement, each Party shall name a designated representative to receive all notices under this Agreement. The initial designated representatives are as follows:

LOTT Clean Water Alliance:

Lisa Dennis-Perez, Director of Environmental Planning & Communication
LOTT Clean Water Alliance
500 Adams St NE
Olympia, WA 98501
Phone: (360) 528-5719
E-mail: lisadennis-perez@lottcleanwater.org

City of Tumwater:

Jay Eaton, Public Works Director
City of Tumwater
555 Israel Road SW
Tumwater, WA 98501
Phone: (360) 754-4140
E-mail: jeaton@ci.tumwater.wa.us

A Party's designated representative or place of business may be changed with advance notice to the other Party.

- 8.2 The LOTT Alliance will maintain 24-hour emergency response personnel for the project, who can be reached by calling (360) 528-5700.
- 8.3 The City will maintain 24-hour emergency response personnel for the project, who can be reached by calling (360) 754-4150.

9. TERM OF AGREEMENT

- 9.1 The term of this Agreement shall commence on the date of the later signature below and continue until terminated as specified in section 10 of this Agreement.

10. TERMINATION

- 10.1 The City may terminate this Supply Agreement for any reason at any time. The City shall give LOTT notice of such a change in status as far in advance as possible, per the Communications Objectives Document.
- 10.2 LOTT may terminate this agreement if the City violates terms of this Agreement, LOTT's NPDES Permit, the Reclaimed Water Rule, or other requirements of the Washington State Departments of Health and Ecology; or if the termination is necessary due to regulatory mandate or termination of LOTT's NPDES Permit, or if LOTT's Board of Directors (Board) determines termination is in LOTT's best interest.
- 10.3 This Supply Agreement will terminate if the City withdraws from the General Agreement, or if the General Agreement is terminated.

11. SHARING OF INFORMATION

- 11.1 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 operation, maintenance, customer comments, metering data, water quality analyses, and regulatory compliance.

12. LEGAL RELATIONS AND INTERPRETATION OF AGREEMENT

- 12.1 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 the designated representatives, the designated representatives shall prepare a joint statement describing the dispute and refer the dispute to the Technical Sub-Committee that advises the LOTT Board. If the dispute is not resolved after consultation with the Technical Sub-Committee, 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.
- 12.2 This Supply Agreement shall be governed by the laws of the State of Washington. The exclusive jurisdiction and venue for any lawsuit between the Parties arising out of this Supply Agreement shall be in Thurston County Superior Court.

- 12.3 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 Supply Agreement.
- 12.4 It is the belief of the Parties that all provisions of this Supply Agreement are lawful. If any covenant or provision of this Supply 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 the Supply Agreement. In such event, the Parties shall enter into immediate negotiations for the purpose of arriving at mutually satisfactory replacement of such covenant or provision, or renegotiation of the terms of the Supply Agreement.
- 12.5 Waiver of any breach of any provision of this Supply 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 Supply Agreement.
- 12.6 This Supply Agreement shall be binding on a Party's assigns and successors. A Party may not assign its rights or delegate its duties under this Supply Agreement in any respect without the written consent of the other Party.
- 12.7 To the maximum extent permitted by law, each Party shall protect, defend, indemnify and hold harmless the other Party and its 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 liability for actions brought by its own employees against the other Party and for that purpose the indemnifying Party specifically waives, as respects the other Party only, 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 Supply Agreement.
- 12.8 LOTT shall defend the City at LOTT's sole cost from and against any cause of action in which LOTT's and the City's right to use reclaimed water pursuant to state statute and LOTT's NPDES Permit is challenged in said cause of action. Where multiple causes of action are brought against the City in the same suit, LOTT's obligation to defend shall extend only to the cause or causes of action that expressly apply to LOTT and the City as described in the preceding sentence of this section. LOTT is not obligated to indemnify the City under any circumstances involving a cause or causes of action as described in this section.

LOTT is not obligated to provide a defense to the City where LOTT's Articles of Incorporation would be violated, or where said defense would be contrary to any applicable law. LOTT's obligation to defend shall take effect only after the City has first tendered defense to any and all insurers that may defend the City and said tender is denied in writing. LOTT will not be obligated to defend the City where any insurer agrees to defend the City, notwithstanding a defense provided under reservation of rights by any covering insurer. LOTT shall have no duty to defend where the City, by and through its agents and employees, intentionally or recklessly fails to act in good faith, or acts contrary to law, and such is a substantial factor in bringing about the cause or causes of action against which LOTT would otherwise be obligated to defend.

13. ATTACHMENTS

13.1 The following documents are attached hereto and incorporated by reference herein:

- Exhibit A: Reclaimed Water Distribution Agreement No. 2
- Exhibit B: End User Agreement Template

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

LOTT Alliance:

City of Tumwater:

By  _____

By  _____

Its EXECUTIVE DIRECTOR

Its Mayor

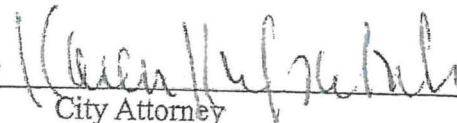
Date: 8/13/2020

Date: May 13, 2020

Approved as to form:

Approved as to form:

By  _____
LOTT Legal Counsel

By  _____
City Attorney