

When recorded return to:
City of Olympia
PO Box 1967
Olympia, WA 98507-1967

**INTERLOCAL AGREEMENT
BETWEEN
THE CITIES OF OLYMPIA, LACEY, TUMWATER AND THE LOTT ALLIANCE
FOR
SANITARY SEWER EMERGENCY RESPONSE MUTUAL AID**

Whereas, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

Whereas, pursuant to RCW 39.34.080, each party is authorized to contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform: provided, that such contract shall be authorized by the governing body of each party to the contract and shall set forth its purposes, powers, rights, objectives and responsibilities of the contracting parties;

Whereas, LOTT Clean Water Alliance (Hereafter “LOTT”) owns and operates the Budd Inlet Wastewater Treatment facility, permitted under Chapter 90.48 RCW as a Publicly Owned Treatment Works (POTW); and

Whereas, LOTT owns, operates, and maintains a system of sewers, pump stations, and pressure mains tributary to the POTW; and

Whereas, Tumwater, Olympia, and Lacey (Hereafter “Cities”) own, operate, and maintain systems of sewers, pump stations, and pressure mains tributary to the LOTT system and POTW; and

Whereas, the LOTT and Cities systems are interconnected, with the Cities' sewers, pump stations, and pressure mains feeding the LOTT sewers, pump stations, and pressure mains en route to the POTW, and

Whereas, in January 2001, the U.S. Environmental Protection Agency (USEPA) prepared a notice of proposed rulemaking which would have required LOTT to develop a Sanitary Sewer Overflow Emergency Response Plan (SSOERP) as one of the major components of the Capacity, Management, Operation and Maintenance (CMOM) standard permit condition. Although the proposed rulemaking was later withdrawn from the Federal Register, the USEPA has continued to incorporate CMOM in its permitting guidance. In January 2005 the USEPA published a Guide for Evaluating CMOM at Sanitary Sewer Collection Systems which reiterates the requirement for SSOERP; and

Whereas, in both the 2001 rulemaking proposal and the 2005 Guide, the USEPA has stressed coordination and cooperation between neighboring jurisdictions. The 2001 proposal includes a requirement for satellite communities to either be covered by the rules and regulations of the POTW National Pollutant Discharge Elimination System (NPDES) permit, or to obtain individual NPDES permits of their own. This would require each of the LOTT partner jurisdictions to develop and maintain SSOERP's, or integrate their system into the LOTT SSOERP; and

Whereas, mutual assistance and cooperation among LOTT and LOTT's four partners will provide a higher level of service to all the customers in each respective service area. It will help limit the extent and potentially damaging effects of sanitary sewer overflows to property and human health. It will allow for a coordinated response to the adverse impact of natural disasters and events, such as earthquake and storms, on the proper function of either party's sewer collection and transmission system. In particularly sensitive areas, the team approach can make a difference in limiting sanitary sewer overflow impacts on wildlife, natural resources, and the local economy. Finally, an increased level of assistance and cooperation will limit reliance on Contractor support during the initial containment phase of a sanitary sewer overflow, allowing a measured allocation of financial resources.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the CITIES and THE LOTT ALLIANCE (LOTT) agree as follows:

I. Purpose/Objective

The purpose of this Agreement is to allow CITIES and LOTT to share resources and provide mutual aid in the event of a sanitary sewer overflow emergency, or other Major Disruption of sewer service, in either party's jurisdiction.

II. Definitions

In this Agreement, the following words shall have the meanings set forth below:

Capacity, Management, Operation and Maintenance (CMOM): The use of widely accepted wastewater industry practices to manage, operate, and maintain collection systems, including the investigation of capacity-constrained areas of the collection system and responding to sanitary sewer overflow (SSO) events.

Major Disruption: An event or disaster, such as a power outage, earthquake, storm, tsunami, or flood, that results or could result in the collapse, breakdown, and/or inability of the sewer collection and transmission system to function as designed without the use of significant additional equipment and labor not normally allocated to the routine operation and maintenance of the system.

National Pollutant Discharge Elimination System (NPDES): A provision of the Clean Water Act which prohibits discharge of pollutants into waters of the United States unless a special permit is issued by EPA, a state, or, where delegated, a tribal government on an Indian reservation.

Requesting Party: Party requesting assistance with a sanitary sewer overflow event arising in that party's jurisdiction.

Responding Party: Party to whom a request for assistance with a sanitary sewer overflow event is made.

Sanitary Sewer Overflow Event (or Emergency): While there is no industry-accepted or USEPA-approved definition of a sanitary sewer overflow event, for the purposes of this agreement it is generally accepted to be the imminent or actual occurrence of sewage overflows from any part of a wastewater collection and transmission system operated by either party that discharges sewage onto the ground, and/or into a surface water or storm water system.

Sanitary Sewer Overflow Emergency Response Plan (SSOERP): The most current Plan each party has in place to address sanitary sewer overflow events.

III. Scope of Agreement/Work

Any party to this Agreement may request mutual aid from any other party to this Agreement to assist in response and containment of sanitary sewer overflow events, or a Major Disruption, including efforts to avoid such an event from occurring, arising in either party's respective jurisdiction. The nature of assistance will vary depending on the

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circumstances of the event, but may include mutual aid in the form of personnel and/or equipment. In the event mutual aid is desired, the following process shall generally be followed:

A. Requests for Mutual Aid. All requests for aid shall be directed to staff of the respective jurisdictions pursuant to the "Notice" section (Section XV) of this agreement.

B. Response to a Request for Mutual Aid. Participation in responding to the other party's Major Disruption is voluntary and at the sole discretion of the Responding Party. Each party is responsible for protecting its own constituency and jurisdiction. The parties to this Agreement shall not be liable to any other party, or be considered to be in breach of or default under this Agreement, for denying a request to respond.

Upon receiving a request for aid, the Responding Party shall:

1. Determine whether or not personnel and/or equipment is available to respond and let the Requesting Party know, as soon as possible, if they will respond;
2. Assign personnel and apparatus in accordance with availability;
3. Dispatch the designated apparatus with instructions to report to the person designated and authorized by the party requesting such aid to supervise the response effort.

C. Operational Command and Control. Overall responsibility for operational command and control of the event remains at all times with the Requesting Party. The Responding Party is responsible for the care and custody of its own personnel and equipment.

IV. Request for Loan of Vehicles and/or Equipment

Any party (borrowing party) may make a request to borrow vehicles and/or equipment from another party, when appropriate for that party to provide services, subject to the terms of this Agreement. This Agreement creates no obligations. Loaning vehicles and/or equipment is entirely voluntary.

The parties to this Agreement recognize that the responsibility of each party is to serve its own jurisdiction. If, during the loan period, the vehicle and/or equipment is needed by the party from whom equipment and/or vehicles have been loaned (loaning party), the borrowing party shall immediately relinquish custody back to the loaning party.

Training

The loaning party shall provide training on how to properly use the vehicle and/or equipment by a person qualified to provide such training. Necessary training over one

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hour in duration will be paid by the borrowing party at the rate of the salary and benefits of the person providing the training.

Transfer of Custody

Transfer of custody occurs when the loaning party relinquishes physical control of the vehicle and/or equipment to the borrowing party, without an operator provided by loaning party.

No Representations/Warranties

The loaning party makes no representations or warranties about the vehicle and/or equipment to the borrowing party. The borrowing party is solely responsible for inspecting the vehicle and/or equipment and determining that it is fit for the purpose for which it is to be used.

Routine Maintenance

Loans of up to thirty (30) days in duration: The loaning party will remain responsible for the cost of any routine maintenance of the vehicle and/or equipment during this period. The borrowing party and loaning party will coordinate to ensure that all necessary maintenance is performed while the vehicle and/or equipment is in the custody of the borrowing party.

Loans of thirty (30) days or more in duration: The borrowing party will be responsible for the cost of any routine maintenance of the vehicle and/or equipment during this period. The borrowing party and loaning party will coordinate to ensure that all necessary maintenance is performed while the vehicle and/or equipment is in the custody of the borrowing party.

- V. **Information Sharing & Public Records Requests.** CITIES and LOTT agree to provide each other with the latest maps of each others' sewer systems in a mutually acceptable electronic format at least once each year. In addition, each party agrees to provide the other with any SSOERP within ninety (90) days of adoption and/or amendment.

The parties mutually agree that documents shared between them may be sensitive and that certain records may be exempt from public disclosure under RCW 42.56.420 or other applicable law. The parties, therefore, agree to take all appropriate steps to ensure that such information and records are not shared beyond the parties to this Agreement. In the event LOTT or CITIES receives a public records request for documents that could reasonably be exempt from disclosure, the party receiving the request agrees to consult with the other party about how best to respond, prior to releasing records. If the parties

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disagree about disclosure, the party responding to the public disclosure request will provide notice adequate to allow the other party time to seek an injunction prohibiting release of the records, should the other party wish to do so.

VI. Reimbursement for Assistance

The Responding Party shall track and account for all labor, equipment and other direct costs associated with such assistance, and submit its expenses to the Requesting party within 30 days of the event.

Equipment Damage. Each party shall be responsible for any repair and/or damage done to its own vehicles or equipment as a result of participation in a mutual aid incident, except when damage is as a result of the other party's negligence.

VII. Method of Payment

Payment will be made by the Requesting Party within thirty (30) days of receipt of a properly detailed expense invoice from the Responding Party.

VIII. Indemnification

LOTT and the CITIES each agree to defend, indemnify and hold the other, their officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees, arising out of or in connection with each entity's respective performance of its responsibilities under the Agreement, except to the extent such injuries and damages are caused by the negligence of the other.

IX. Dispute Resolution

In the event of any dispute, the parties shall first attempt to resolve the issues through mediation prior to filing any action in court.

X. Joint Board

This Agreement creates no Joint Board and no separate legal entity.

XI. Duration of Agreement

This Agreement shall be effective for five (5) years unless otherwise terminated in the manner described under the termination section of this Agreement.

XII. Termination of Agreement

This Agreement may be terminated upon sixty (60) days notice to the other parties using the method of notice provided for in this Agreement.

XIII. Entire Agreement

This Agreement sets forth all terms and conditions agreed upon by CITIES and LOTT and supercedes any and all prior agreements, oral or otherwise, with respect to the subject matter addressed herein.

XIV. Recording

Prior to its entry into force, this Agreement shall be filed 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.

XV. Notice

Any notice required under this Agreement shall be to the party at the address listed below and shall become effective three days following the date of deposit in the United States Postal Service.

CITY OF OLYMPIA
Attn: Water Resources Director
PO Box 1967
Olympia, WA 98507-1967

CITY OF TUMWATER
Attn: Director of Public Works
555 Israel Road S.W.
Tumwater, WA 98501

CITY OF LACEY
Attn: Water/Wastewater Supervisor
1200 College Street SE
Lacey, WA 98503

LOTT CLEAN WATER ALLIANCE;
Attn: Facilities Director
500 Adams Street NE
Olympia, WA 98501

XVI. Interpretation and Venue

This Agreement shall be governed by the laws of the State of Washington as to interpretation and performance. The parties hereby agree that venue for enforcement of this agreement shall be the Superior Court of Thurston County.

XVII. Effective Date

This Agreement shall take effect on the date of the last authorizing signature affixed hereto.

CITY OF OLYMPIA

LOTT CLEAN WATER ALLIANCE

Mayor (or Mayor Pro Tem)


Board President

Date: _____

Date: _____

Approved as to form:

Approved as to form:



City Attorney (ACA)

General Counsel

CITY OF LACEY

City Manager

Date: _____

Approved as to form:

City Attorney

CITY OF TUMWATER

Mayor (or Mayor Pro Tem)

Date: _____

Approved as to form:

City Attorney