

**INTERLOCAL AND CONFIDENTIALITY AGREEMENT
BETWEEN THE CITY OF TUMWATER, CITY OF LACEY,
CITY OF OLYMPIA, THURSTON COUNTY, AND
LOTT CLEAN WATER ALLIANCE
FOR PUBLIC DISCLOSURE COMMISSION GUIDANCE**

THIS INTERLOCAL AND CONFIDENTIALITY AGREEMENT is entered into by and between LOTT Clean Water Alliance (LOTT) and the cities of Tumwater, Lacey, and Olympia (CITIES), and Board of Thurston County Commissioners (COUNTY). LOTT, the CITIES, and COUNTY, are referred to herein collectively as “the Parties.”

WHEREAS, there is a recent concern in how elected officials disclose their representation on local Boards and Commissions when they report annually to the Public Disclosure Commission (PDC) using the F-1 Personal Financial Affairs Statement Form; and

WHEREAS, the Parties each have elected officials that serve on these Boards and Commissions in Thurston County, including serving on the LOTT Clean Water Alliance Board of Directors; and

WHEREAS, the Parties wish by this Agreement to provide, to the full extent permitted by applicable law, for sharing such information without waiving any privileges against disclosure that might attach thereto and to document the understanding concerning such sharing of information; and

WHEREAS, the Parties recognize and acknowledge that working cooperatively, as set forth below in this Agreement, will assist each jurisdiction in meeting its responsibilities to its citizens and elected officials; and

WHEREAS, RCW Chapter 39.34, authorizes local governments to contract for the conduct of activities which each party has the authority to perform.

NOW, THEREFORE, in consideration of the term and conditions contained herein, the Parties agree as follows:

Section 1. Scope of Agreement. LOTT Clean Water Alliance, acting as lead agency, will contract with specialized legal counsel to assist the Parties in developing a response to the Public Disclosure Commission. The scope of services will be developed jointly by the Parties. LOTT’s role is to act as administrator and facilitator of the work under this Agreement. In performing that role, LOTT will

act in good faith and with ordinary care, but will not be held to the standard of a fiduciary or trustee.

Section 2. Allocation of Costs.

A. The following will be considered shared costs to be borne equally by the Cities and County only: attorney fees and reimbursable costs associated with shared work performed by outside counsel for the benefit of the Parties in responding to the PDC, not to exceed the total amount of Five Thousand Dollars (\$5,000.00). Reimbursable costs will be billed at the actual cost and include travel, postage, copy fees, filing fees, and such other reimbursable costs as may be agreed to by the Parties. Each of the Parties' own internal costs will be borne by each respective party and not be reimbursable by the other Parties.

B. Payment of attorney fees and costs will be pursuant to invoice. The Parties will each receive a copy of the invoice and shall remit their equal pro rata share to LOTT within thirty (30) days of receipt. Any dispute or question about the amount due shall be directed to LOTT's Finance Director. LOTT agrees to prepare any amendments to this Agreement or agreements for any necessary consultants and/or expert witnesses.

C. Any performance by outside counsel specifically related to this project and on behalf of the Parties prior to the effective date of this Agreement is hereby ratified and affirmed and the Parties agree to be responsible for their share as noted herein.

Section 3. Exchange of Materials/Non-waiver of Privilege.

A. The Parties agree that from time to time as part of the joint discussions intended by this Agreement, they may share materials or information which may contain confidential and privileged communications that are protected from discovery or other disclosure by the attorney-client privilege, the work product doctrine, the common interest privilege, and/or other applicable privilege (collectively, "Exchanged Materials").

B. It is the Parties' intention and understanding that such exchanging or sharing of materials or information is to be in the furtherance of the joint and common interests of the Parties. Therefore, any Exchanged Materials that are otherwise protected against disclosure by the attorney-client privilege, the work product doctrine, the common interest privilege, or any other applicable privileges and rules of confidentiality will not, by the fact of exchange between the Parties, suffer waiver of any applicable privilege, lose protection from disclosure, or be deemed to have reduced confidentiality. The Parties also understand that sharing

or exchanging otherwise non-privileged or non-protected materials will not bestow any privilege, protection, or immunity from production upon such materials. Uncertainty as to the applicability of a privilege shall result in treating the material as privileged until such time as the uncertainty is resolved.

C. The Parties agree to mark all privileged Exchanged Materials with the legend “CONFIDENTIAL AND PRIVILEGED COMMUNICATION, PROVIDED OR PRODUCED PURSUANT TO JOINT CONFIDENTIALITY AGREEMENT,” or other similar language; however, the failure of any Party to so mark Exchanged Materials shall not create a presumption that the materials are exchanged outside the protection of this Agreement. It shall be presumed that materials exchanged between the Parties are exchanged pursuant to this Agreement unless the contrary is explicit and in writing.

D. The Parties agree that Exchanged Materials will be disclosed only to the Parties, their counsel, specialty counsel retained for the subject of this Agreement, and employees or agents who have need of the Exchanged Materials to further the purpose of this Agreement.

Section 4. Duration. The terms and performance of this Agreement shall commence after the approval by the governing body of each Party and following the recording of this Agreement with the Thurston County Auditor or posting it on each Party’s website as provided in RCW 39.34.040. This Agreement will terminate on December 31, 2017.

Section 5. Withdrawal from Agreement. Any party may withdraw from this Agreement at any time. Withdrawal shall be effective immediately upon receipt of written notice by the other parties. The withdrawing party shall be responsible for its pro rata share of the attorneys’ fees and/or costs incurred prior to withdrawal.

Section 6. Changes. Any party may request changes to this Agreement, however, no change or addition to this Agreement shall be valid or binding upon any party unless such change or addition be in writing and signed by the Parties. Such amendments shall be attached to and made part of this Agreement.

Section 7. Administration. Each party shall be responsible for administering the terms of this Agreement. No separate legal entity is created by reason of entering into this Agreement. The Parties shall each designate a representative for purposes of contacting and/or meeting with the retained attorney.

Section 8. Attorney fees and costs. If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or

misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party(s), in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

Section 9. Jurisdiction and Venue. 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 laws of the State of Washington, both as to interpretation and performance. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Thurston County, Washington.

Section 10. Severability. If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions.

Section 11. Entire Agreement. The Parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by the Parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. The Parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the Parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

IN WITNESS WHEREOF, this Agreement is executed by the Parties as of the date set forth below.

CITY OF TUMWATER

CITY OF LACEY

Pete Kmet, Mayor

Scott Spence, City Manager

Date

Date

