

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF OLYMPIA, PORT OF OLYMPIA, AND THE LOTT CLEAN WATER
ALLIANCE TO ESTABLISH THE OLYMPIA SEA LEVEL RISE RESPONSE
COLLABORATIVE**

INTERLOCAL AGREEMENT

This Interlocal Agreement is entered into by and between the City of Olympia (“City”), a Washington non-charter code city, and the Port of Olympia (“Port”), a Port District formed under RCW Chapter 53.04, and the LOTT Clean Water Alliance (“LOTT”), a 501(c)(3) corporation acting as a public agency to provide wastewater resource management services. The City, Port, and LOTT are referred to collectively as the “Members.”

RECITALS

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 Member 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 must be authorized by the governing body of each Member to the contract and must set forth its purposes, powers, rights, objectives, and responsibilities of the contracting Members; and

Whereas, the Members entered into an Interlocal Agreement in 2017 to jointly fund and participate in a formal sea level rise planning process for downtown Olympia and the Port peninsula; and

Whereas, the resulting Olympia Sea Level Rise Response Plan, dated March 2019, is a community plan that provides a comprehensive menu of short-term, mid-term, and long-term strategies for minimizing and preventing flooding to downtown Olympia and protecting the Budd Inlet Treatment Plant from rising seas; and

Whereas, implementation of the Olympia Sea Level Rise Response Plan will take ongoing coordination and collaboration across governmental entities, including but not limited to the Members, non-profit organizations, and other stakeholders; and,

Interlocal Agreement between
City of Olympia, Port of Olympia and LOTT Clean Water Alliance
to Establish the Olympia Sea Level Rise Response Collaborative

Whereas, the Members understand the critical importance of establishing the governmental and financial structure to support the timely implementation of the Olympia Sea Level Rise Response Plan and;

Whereas, the Members desire to build on the collaboration which occurred during the sea level rise planning process and establish an interjurisdictional governance framework for implementation of the Olympia Sea Level Rise Response Plan.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Members agree as follows:

I. Intent

The Olympia Sea Level Rise Response Collaborative (Collaborative) is a consortium of Members that come together to take action on sea level rise adaptation and support regional climate change mitigation efforts, with the ultimate goal of improving the quality of life for all Thurston County residents. The Collaborative provides a mechanism through which its Members can learn, explore, collaborate, incubate, coordinate, and communicate policies and best practices that Member leadership can decide to advance collectively or singularly. The Collaborative is made up of an Executive Committee of Member representatives and a staff-level Technical Work Group (Appendix A).

The Members intend to work together to coordinate sea level rise response as envisioned in the Olympia Sea Level Rise Response Plan.

As recommended in the Olympia Sea Level Rise Response Plan, the Collaborative may expand beyond the initial Members. It is the intent to invite others to join the Collaborative. At a minimum, the Squaxin Island Tribe, the State of Washington, other jurisdictions, quasi-governmental entities, and non-profit organizations may be invited to join the Collaborative and engage in regional sea level rise response actions. Invitees may be asked to join the Collaborative as New Members or Associates. New Members will participate at the Executive Committee level with full voting rights and share in some portion of funding for implementation of sea level rise response actions and are referred to interchangeably in this Agreement as “Members”. Associates are non-voting, ex-officio participants in the Collaborative that provide subject matter expertise or other support, and are excluded from the term “Members” as used in this Agreement.

This Agreement allows for establishment of a Member-funded staff liaison position to help administer and facilitate the Collaborative’s business as outlined in section III(f) of this Agreement.

This Agreement is also intended to allow the Members to work together to implement select short-term projects identified in the Olympia Sea Level Rise Response Plan and conduct additional longer term planning within existing budget constraints.

II. Policy Focus – Sea Level Rise

Each of the Members is engaged in work to adapt to sea level rise and support regional climate change mitigation efforts. By working together, the Collaborative can create coordinated policies, increase efficiencies, leverage resources, educate and engage the community, and provide better services related to these issues. This collaborative work also fosters linkages between related regional, state, and federal programs.

a. Guiding Principles

The Collaborative embraces these guiding principles:

The Collaborative anticipates, identifies, and solves nascent and long-term sea level rise adaptation issues.

The Collaborative supports regional climate change mitigation efforts.

The Collaborative reaches across jurisdictional boundaries to maximize resources and develop effective public policy.

The Collaborative improves coordination and communication between its Members and stakeholders creating greater efficiencies, delivering desired outcomes, and providing better service.

Each Member retains its autonomy and voluntarily makes and implements Collaborative agreements.

The Collaborative agrees to create alignment and efficiency, adding value to each Member's functions, for each policy issue that it tackles.

The Collaborative operates under the goal of open and transparent communication, including communication outcomes in a clear and coherent manner to stakeholders.

III. Scope of Agreement/Work

- a. Executive Committee. Each Member will appoint one representative and one alternate representative to serve as the points of contact for purposes of representing their interests in this Agreement and to formally serve on the Executive Committee.

The Member representatives on the Executive Committee will conduct business on a consensus basis.

Through Executive Committee participation, Member representatives learn about issues of significance and commit to sharing insights in other forums, including Member governing bodies and local stakeholder groups. When engaging as an Executive Committee, Member representatives commit to advancing Collaborative interests and understanding, informed by their local experience and responsibilities. The Executive Committee is responsible for reviewing and finalizing work products of the supporting staff-level Technical Work Group (Appendix A) and recommending approval to each Members' respective governing bodies.

- b. **By-Laws.** The Collaborative will follow the by-laws in Appendix A to govern such matters as operating procedures, officers, and other parties joining the Collaborative.
- c. **Short-term Project Implementation.** Within budget constraints, the Members, working through the Technical Work Group, may work jointly to implement short-term projects identified in Table 11 of the Olympia Sea Level Rise Response Plan. Any requests for funding to implement short-term projects will require approval of the respective Members' governing bodies.
- d. **Mid- and Long-term Project Implementation.** Implementation and funding of significant mid- and long-term projects will require a separate agreement.
- e. **Strategic Planning.** The Olympia Sea Level Rise Response Plan is the Collaborative's initial strategic plan. The strategic plan will be re-evaluated and updated, as needed, based on the best available science, monitoring data and new or evolving conditions. Each Member will contribute to the costs of updating the strategic plan. Planning costs will be determined by the Technical Work Group and approved by the Executive Committee.
- f. **Administrative Support.** The Collaborative will cooperatively establish and fund a Liaison position. Initially, City of Olympia staff will fill the Liaison position. The Liaison will be responsible for, at a minimum, administrative tasks associated with the Executive Team and any Collaborative Committees that may be established (e.g. meeting logistics, agenda setting, public notice, record keeping, budget reports) and the preparation of a Collaborative Annual Report. Additional tasks to be conducted by the Liaison will be determined during the establishment of the Collaborative's annual work plan and/or Liaison's annual budget.

Each Member is obligated to contribute funds to fully defray the Liaison costs incurred by the City of Olympia pursuant hereto in a timely manner. The Liaison costs for the 2021 calendar year are anticipated to not exceed \$40,000, roughly equivalent to one quarter full time employee. In subsequent years, the Executive Committee will determine and approve, by no later than August 31, the subsequent year's budget for the Liaison costs.

Based on the annually approved Liaison costs, the City of Olympia shall issue invoices quarterly specifying each Member's allocated share of actual expenses, including any adjustments to the allocation share resulting from the addition of new Members. Invoices must be paid within thirty (30) days.

The City of Olympia will prepare quarterly budget to actual reports for review by the Executive Committee.

IV. Rights of Ownership – Property – Final Products

The Collaborative shall not acquire any tangible property, including personal property or real property. All products or intangible property that result from the work outlined in this Agreement will be jointly owned by the Members. Such joint ownership will continue after termination or expiration of this Agreement.

V. New Member Admission

New Members or Associates may join the Collaborative following a written invitation from the Executive Committee. Membership will be contingent on the New Member signing an acknowledgment stating that the New Member agrees to be bound by the terms and conditions of this Agreement and the Collaborative's By-Laws. It is the intent of this provision to allow New Members to join without the need for an amendment to this Agreement.

VI. Member Withdrawal

A Member may voluntarily withdraw from the Collaborative. For Collaborative budgeting purposes, written notice of withdrawal must be provided to the Collaborative and all Members no later than June 30th of any calendar year, and the withdrawal will only be effective on January 1st of the following calendar year.

VII. Indemnification & Insurance

Each Member agrees to defend, indemnify, and hold the other Members, 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 the indemnifying Member's performance of this Agreement, including injuries and damages caused by the negligence of the indemnifying Member's officers, officials, or employees.

Each Member agrees to jointly defend, indemnify, and hold any New Member, 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 the Collaborative's work predating the New Member's admission to the Collaborative.

VIII. No Separate Legal Entity Created

This Agreement creates no separate legal entity.

IX. Duration of Agreement

This Agreement is effective on the date of its entry into force pursuant to XIII below and shall terminate upon completion of the tasks necessary to accomplish the purpose of the Agreement, unless sooner terminated by the Members as provided herein.

X. Dispute Resolution

- a. Step One – Negotiation. In the event of a dispute concerning any matter pertaining to this Agreement, the Members involved shall attempt to address their differences by informal negotiation. The Member perceiving a dispute or disagreement persisting after informal attempts at resolution shall notify the other Members in writing of the general nature of the issues. The letter must be identified as a formal request for negotiation and must propose a date for representatives of the Members to meet. The other Members shall respond in writing within ten (10) business days. The response must succinctly and directly set out that Member's view of the issues or state that there is no disagreement. The Members shall accept the date to meet or shall propose an alternate meeting date not more than ten (10) business days later than the date proposed by the Member initiating dispute resolution. The representatives of the Members shall meet in an effort to resolve the dispute. If a resolution is reached the resolution will be memorialized in a memorandum signed by all Members which becomes an addendum to this Agreement. Each Member will bear the cost of its own attorneys, consultants, and other Step One expenses. Negotiation under this provision may not exceed 90 days from the date of the

notification of the dispute. If a resolution is not reached within 90 days, the Members shall proceed to mediation.

- b. Step Two – Mediation. If the dispute has not been resolved by negotiation within 90 days of the initial letter proposing negotiation, any Member may demand mediation. The mediator must be chosen by agreement. Each Member will bear the cost of its own attorneys, consultants, and other Step Two expenses. The Members to the mediation shall share the cost of the mediator. A successful mediation will result in a memorandum agreement which becomes an addendum to this Agreement. Mediation under this provision may not exceed 90 days from the date of the demand for mediation. If the mediation is not successful within 90 days, the Members may proceed to litigation.
- c. Step Three – Litigation. Unless otherwise agreed by the Members in writing, Step One and Step Two must be exhausted as a condition precedent to filing of any legal action. A Member may initiate an action without exhausting Steps One or Two if the statute of limitations is about to expire and the Members cannot reach a tolling agreement, or if either Member determines the public health, safety, or welfare is threatened.

XI. Termination of Agreement

This Agreement may be terminated upon mutual agreement of the Members.

XII. Interpretation and Venue

This Agreement is governed by the laws of the State of Washington as to interpretation and performance. Venue for enforcement of any provisions is the Superior Court of Thurston County, subject to the dispute resolution process in Section VIII having been exhausted or dispensed with by agreement.

XIII. Entire Agreement

This Agreement sets forth all terms and conditions agreed upon by the Members and supersedes any and all prior agreements oral or otherwise with respect to the specific subject matter addressed herein.

XIV. Recording

Prior to its entry into force, the City of Olympia shall file this Agreement with the Thurston County Auditor's Office or this Agreement must be posted upon the Members' websites as provided by RCW 39.34.040.

XV. Counterparts

This Agreement may be executed in counterparts, and all such counterparts once so executed together constitute one final agreement, as if one document had been signed by all Members, and each such counterpart, upon execution and delivery, is a complete original, binding on the Members. A faxed or email copy of an original signature has the same force and effect as the original signature.

XVI. Notice

Any notice required under this Agreement must be to the Member at the address listed below and becomes effective three days following the date of deposit with the United States Postal Service. The address for notice to New Members must be disclosed in the acknowledgement required by Section V of this Agreement.

CITY OF OLYMPIA:

Attn: Eric Christensen, Water Resources Director
Re: Sea Level Rise Response Plan Implementation
PO Box 1967
Olympia, WA 98507-1967

PORT OF OLYMPIA:

Attn: Environmental Director, Planning, Public Works and Environmental Director
Re: Sea Level Rise Response Plan Implementation
606 Columbia Street NW
Olympia WA 98501

LOTT CLEAN WATER ALLIANCE:

Attn: Lisa Dennis-Perez, Environmental Planning & Communications Director
Re: Sea Level Rise Response Plan Implementation
500 Adams Street NE
Olympia, WA 98501

This Agreement is hereby entered into between the Members and takes effect on the date of the last authorizing signature affixed hereto:

[SIGNATURES ON FOLLOWING PAGE]

CITY OF OLYMPIA

PORT OF OLYMPIA

Steven J. Burney, City Manager

Sam Gibboney, Executive Director

Date: _____

Date: _____

Approved as to form:

Approved as to form:

Michael M. Young

Deputy City Attorney

Port General Counsel

LOTT CLEAN WATER ALLIANCE

Michael Strub, Executive Director
Date: _____

Approved as to form:

LOTT Attorney

APPENDIX A

By-Laws of the Olympia Sea Level Rise Response Collaborative

ARTICLE 1 — PURPOSES

The Olympia Sea Level Rise Response Collaborative was formed on _____ through an interlocal agreement (ILA) signed by the City of Olympia (Olympia), the LOTT Clean Water Alliance (LOTT), and the Port of Olympia (Port). All signers have mutual interests in the long-term protection of downtown Olympia from rising seas.

Therefore, the purpose of the Collaborative is to come together to take action on sea level rise adaptation and support regional climate change mitigation efforts, with the ultimate goal of improving the quality of life for all Thurston County residents. The Collaborative will identify, fund (directly and indirectly), and implement projects that minimize, prevent, and/or accommodate flooding, to adapt and/or protect downtown Olympia, the Budd Inlet Treatment Plant, and the Port peninsula from rising seas. The Collaborative intends to work together to coordinate sea level rise response as envisioned in the Olympia Sea Level Rise Response Plan.

ARTICLE 2 — COLLABORATIVE

The Collaborative has two types of participants:

- **Members** share equal representation in the Collaborative. Members contribute financially to the Collaborative and have equal voting rights in decision-making. All Members are bound by the terms of the ILA incorporated herein by reference.
 - Members each have one representative, and one alternate representative, on the Executive Committee. Alternate representatives may attend and participate in all Executive Committee meetings. Representatives are members of the Member's governing body. If a Member's representative ceases to be a member of the Member's governing body, that person ceases to be that Member's representative and the Member shall appoint another member of its governing body to serve as representative.
 - Each Member has one vote on the Executive Committee, exercised by its representative, or in the representative's absence, its alternate representative.
 - Olympia, LOTT, and the Port are the initial Members.

Additional entities with compatible and consistent organizational missions may be invited to join as Members of the Collaborative. Those invited to become Members shall make financial contributions to the Collaborative, as provided in the ILA. Their representatives must be designated by a letter from the invited Member's designated authority, such as a Mayor, City Manager, or Executive Director. Prior to joining the Collaborative, Invited Members shall sign an acknowledgment stating that the New Member agrees to be bound by the terms and

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conditions of ILA and the Collaborative's By-Laws. New Members may join the Collaborative without the need for an amendment to the ILA.

- **Associates** are non-voting, ex-officio participants. Associates may be admitted on a permanent or ad-hoc basis to provide subject-matter expertise or other support to the Collaborative, such as project support or assistance for grant application, administration, or implementation activities. Associates are not bound by the terms of the ILA and the requirement to provide in-kind support.

All Members and Associates, shall, to the extent practical and feasible, keep the Collaborative informed of activities that affect the purpose of the organization.

ARTICLE 3 — GOVERNANCE

The management and control of the affairs of the Collaborative is vested in its Members. Member representatives, one for each Member, comprise an **Executive Committee** tasked with reviewing and approving implementation of the sea level rise response actions. Associates may participate in Executive Committee meetings as non-voting, ex-officio participants only.

ARTICLE 4 — OFFICERS

4.1 Number

The Executive Committee officers are a Chair and Vice-Chair.

4.2 Selection & Term of Office

Member representatives serve at the discretion of their Member's governing body or designated authority for one-year terms. Terms begin in March. Member representatives may serve multiple one-year terms. If a representative's tenure on the Member's governing body ends during the representative's term, the Member's governing body will replace the representative following its own protocols.

The Executive Committee at its first ever meeting shall select a Chair and Vice-Chair. Henceforth, the Chair and Vice-Chair are selected by the Executive Committee each year. A representative of any Member may serve in the Chair or Vice-Chair capacity.

Any representative is eligible and may serve multiple terms as either Chair or Vice-Chair. The Executive Committee strives to rotate the officers among the Members.

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If the Chair or Vice-Chair ceases to be a representative on the Executive Committee during the officer's term, the Executive Committee will select a new officer who will serve for up to one year until the annual March officer selection.

Executive Committee representatives may nominate another representative or put forward their own name to serve as the Chair or the Vice-Chair.

The Executive Committee will select the Chair and Vice-Chair using its decision-making protocol each year at the March meeting. The previous Chair or Vice-Chair will facilitate the March meeting.

4.3 Chair

The Chair formally presides at each Executive Committee meeting and strives to ensure that Members work together effectively. The Chair is responsible for managing and facilitating effective meetings of the Executive Committee and shall call meetings and set meeting agendas. The Chair is also responsible for identifying the location of meetings.

4.4 Vice-Chair

In the absence of the Chair, or in the event of their inability or refusal to act, the Vice-Chair shall perform the duties of the Chair.

ARTICLE 5 — COMMITTEES

The Collaborative may establish and empower committees as it deems necessary, and may solicit and approve participation by the general public in those committees. Each committee must be chaired by a Member's designee. Committee chairs shall perform all duties incident to their office as determined by the Collaborative. Committee decisions must be approved by the Collaborative prior to enactment.

- The Technical Work Group is the standing committee intended to provide primary support to the Executive Committee and the Collaborative. The Work Group is responsible for tracking science, monitoring sea level rise, and facilitating implementation of adaptation strategies. Member staff are envisioned to participate in this Work Group. The Work Group will lay the foundation for future sea level rise response implementation.
- At the direction of the Executive Committee, the Technical Work Group may be supplemented by other standing or ad hoc committees, or by membership that is temporarily adjusted to address specific duties or issues, such as:
 - Finance: support the development, investigation, and pursuit of funding opportunities.

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- Stakeholder engagement: provide input and feedback regarding Collaborative actions, technical work, finance options, implementation of adaptation measures, or other topics.

ARTICLE 6 — PROCEDURE

6.1 Meetings

The Executive Committee shall generally meet quarterly, typically in March, June, September, and December. The Executive Committee can shift its schedule or schedule additional meetings if deemed necessary or timely. Meetings may be held in-person or virtually. Attendance at in-person meetings of the Executive Committee may, in special situations, be by telephonic or electronic means. Special meetings may be held at the call of the Chair, or upon written request to the Executive Committee from a quorum of representatives.

All Executive Committee meetings are open to the public. Meeting agendas will be available on-line in advance of each meeting. The Executive Committee may designate public comment periods on the agenda.

Associates may participate in Executive Committee meetings as non-voting, ex-officio participants.

The staff Liaison will be responsible for note taking and documentation. The Chair will ensure meeting summaries reflect Executive Committee discussion and decision-making. The staff Liaison will distribute the draft meeting summaries to the Executive Committee to review and refine. The Executive Committee will approve meeting summaries at its subsequent meeting. Approved meeting summaries will be made available on-line.

6.2 Notice

The Chair or Vice-Chair shall give notice of all meetings, or direct that notice of all meeting be given, to all Members and Associates not less than ten (10) days prior to the date of the meeting, except in the case of an emergency, in which case notice of the meeting must be given as far in advance as circumstances reasonably allow. Any notice required under the provisions of these By-laws must be given in writing or by email. Business to come before meetings must be stated in the notice.

6.3 Quorum

More than half of the Members representatives constitute a Quorum for the purposes of conducting business at any meeting of the Executive Committee. A Quorum once attained continues until adjournment despite the voluntary departure of any Member representative.

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If less than a Quorum is anticipated or present at a meeting and a decision or decisions are time-sensitive, Members representatives not present may vote beforehand by written proxy submitted to the Chair or Vice-chair, or afterwards, the Chair may conduct an email poll for non-attending Members.

6.4 Procedure

The Executive Committee is a forum for learning, dialogue, and guidance tied to its purpose. The Executive Committee may periodically make decisions to advance or develop its core agenda. The Executive Committee cannot make decisions or set policy that binds any of the Members.

The Executive Committee shall strive for consensus in its decision-making. Consensus is reached when Members agree they can “live with” the proposal. The definition of consensus spans the range from strong support to neutrality to abstention to “I can live with it.” A Member may not like a part or the full proposal and still allow it to move forward. This would still constitute a consensus agreement.

Members will hold a consent vote on each decision. The act of a Quorum (more than half) of the Collaborative’s Members—in person, by proxy, or email poll—shall be the act of the Executive Committee so meeting.

A decision may be accomplished at the same meeting the decision is introduced, unless precluded by law. If a decision cannot be reached at the initial reading, final passage may be accomplished at a subsequent reading at a subsequent meeting.

If unable to reach agreement, the Member who has a concern will be asked to present a constructive proposal that is responsive to others’ interests for the Executive Committee to consider.

If still unable to reach agreement, Members will consider and select a fallback option to resolve the issue. Fallback options include:

- a) Identifying issues requiring further research and suspending deliberations until the research has been completed;
- b) Consulting with Members’ governing bodies;
- c) Letting the primary responsible agency impose a decision;
- d) Setting the issue aside and discussing it at a later date; or
- e) Resolving disputes between Members following the process outlined in the ILA incorporated herein by reference.

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6.5 Invited Members or Associates

Membership is granted to Invited Members and Associates only by consensus of all current Members consistent with the terms of these Bylaws. All memberships remain in force for the duration of the ILA incorporated herein by reference, with the exception of withdrawal or removal.

6.6 Withdrawal

Subject to the terms of the ILA if applicable, any Member or Associate may voluntarily withdraw from the Collaborative. For Collaborative budgeting purposes, withdrawing Members must provide written notice of withdrawal to the Collaborative and all Members no later than June 30th of any calendar year, and the withdrawal will only be effective on January 1st of the following calendar year. Any Associate may withdraw at any time by delivering written notice to the Chair or Vice-Chair of the Collaborative and such withdrawal takes effect upon delivery.

6.7 Removal

The Collaborative may, subject to the ILA if applicable, remove any Member or Associate participant at any time solely by consensus of all current Members, excluding the Member or Associate participant in question, at a regular business meeting. Such removal takes effect immediately.

ARTICLE 7 — ADMINISTRATION

7.1 Fiscal Year

The fiscal year is the calendar year.

7.2 Books & Records

The staff liaison shall keep minutes of all meetings and shall provide them to any Member or Associate upon request. All records are open for public inspection for any proper purpose at any reasonable time.

The Collaborative shall report annual accomplishments and progress at the last Executive Committee meeting of the calendar year. This meeting will provide an opportunity for the Executive Committee to reflect on progress made over the course of the year and set priorities in a work plan for the subsequent two years.

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7.3 Fiscal Agent

The Collaborative has no authority, legal or otherwise, to directly act as a fiscal agent for any purpose including, but not limited to accepting grants, executing contracts, or opening bank accounts.

ARTICLE 8 — MISCELLANEOUS

8.1 Strategic Plan

The Olympia Sea Level Rise Response Plan is the Strategic Plan to guide the Collaborative’s mission. The Collaborative shall update the Strategic Plan at least every five years for the life of the organization.

8.2 Amendment

These By-laws may be amended by consensus of the Members at any meeting provided all Members have been notified of this purpose.

8.3 Dissolution

Dissolution of the Collaborative is controlled by the ILA incorporated herein by reference.