

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF OLYMPIA, PORT OF OLYMPIA AND THE LOTT CLEAN WATER
ALLIANCE TO ESTABLISH AN INTERJURISDICTIONAL GOVERNANCE
FRAMEWORK TO ADDRESS SEA LEVEL RISE**

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 pursuant to RCW Chapter 39.34. The City, Port, and LOTT are referred to collectively as the “Parties” or individually as “Party.”

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 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; and

WHEREAS, the Parties 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 Parties, non-profit organizations, and other stakeholders; and,

WHEREAS, the Parties 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 Parties 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 Parties agree as follows:

I. Purpose/Objective

The Parties intend to work together to develop and implement a governance structure to coordinate sea level rise response as envisioned in the Olympia Sea Level Rise Response Plan.

The objective of this Agreement is the development of the governance structure to coordinate sea level rise response. At the conclusion of the work effort outlined in Section II, the Parties intend to execute a new interlocal agreement to formally establish the governance structure developed under this Agreement.

As recommended in the Olympia Sea Level Rise Response Plan, the governance structure may expand beyond the Parties to include, but not be limited to, the State of Washington, other jurisdictions, quasi-governmental entities and non-profit organizations engaged in regional sea level rise response actions.

This Agreement is also intended to allow the Parties to work together to implement select short-term projects identified in the Olympia Sea Level Rise Response Plan. These efforts will take place concurrent with the work effort outlined in Section II of this Agreement, and within existing budget constraints.

II. Scope of Agreement/Work

- a. **Joint Administrative Committee**. The Parties will appoint up to two representatives to serve as the point of contact for purposes of representing their interests in this Agreement and to formally serve on the Joint Administrative Committee. The Parties' representatives on the Joint Administrative Committee will conduct business on a consensus basis, meaning each party must agree to support any proposed action with each jurisdictions' two representatives, when applicable, having an equally weighted voice.

The Joint Administrative Committee will be responsible for reviewing and finalizing the Core Team work products outlined in Section III.b.

The City will coordinate Joint Administrative Committee meetings, decisions and work products until such time a new Interlocal Agreement as envisioned by this Agreement is executed.

- b. **Governance Structure Development.** The Parties agree to delegate day-to-day coordination and production of a draft governance structure to a staff project Core Team consisting of a minimum of one individual each from the City, Port and LOTT. The City will coordinate Core Team meetings, decisions and work products. When possible, Core Team business will be conducted on a consensus basis. If consensus is not possible, all alternative language will be forwarded to the Joint Administrative Committee for consideration and decision.

Partnership and governance structure development work products assigned to the Core Team include: 1) recommended roles, responsibilities and composition of any committee(s) recommended to be included in the governance structure 2) draft operating by-laws of any committee(s) recommended to be included in the governance structure, 3) a draft interlocal agreement pertaining to formally establishing the recommended governance structure and, 4) other products as assigned by the Joint Administrative Committee.

To gain support for the implementation of the Olympia Sea Level Rise Response Plan and participation in the governance structure, the Core Team may, at its discretion, invite others (e.g. staff representatives from State agencies or other stakeholders) to attend Core Team meetings or otherwise assist with the development of its assigned work products.

- c. **Near-term Project Implementation.** The City and LOTT will jointly fund the costs (excluding design and contract management) for installation of a new tide gate on the "Fiddlehead" outfall pipe located at the intersection of Columbia Street and Corkey Avenue. The cost for this project will not exceed \$75,000 per Party. The City of Olympia will be responsible for designing and contracting the project.

In addition to the Fiddlehead outfall tide gate project, within existing budget constraints, the Parties, working through the Core Team, will work jointly to implement select projects identified in the Olympia Sea Level Rise Response Plan. See Exhibit A for projects anticipated to be jointly implemented during the duration of this Agreement. Under this Agreement, such joint actions will not initially exceed \$50,000 per Party in funding or in-kind contributions.

Requests for joint funding to implement near-term projects may involve some or all of the Parties, depending on the Parties' respective interests in the projects. Joint funding requests will require approval of each involved Party through their established expenditure approval processes and can, if agreed upon in writing, exceed the initial dollar amount (\$50,000) contained in this Agreement.

Any required professional or construction services required to implement the jointly funded near-term projects identified in Exhibit A will be chosen through the standard selection process for professional or construction services as required by the laws of

the State of Washington. The Olympia City Manager is authorized to execute any contract necessary to implement jointly-funded near term projects.

When a contract is necessary to implement a jointly-funded near term project, City of Olympia staff will be responsible for contract management, consultant communication and dissemination of project information, and the City assumes any liability arising from such responsibilities, and the performance of these responsibilities will be interpreted as within the scope of the City's obligations to defend, indemnify, and hold harmless as set forth in Section IV of this Agreement.

III. Rights of Ownership – Final Products

All products that result from the work outlined in this agreement will be jointly owned by the Parties.

IV. Indemnification & Insurance

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

V. No Separate Legal Entity Created

This Agreement creates no separate legal entity.

VI. Duration of Agreement

This Agreement shall be effective on the date of the last authorizing signature affixed hereto and shall terminate upon completion of the tasks necessary to accomplish the purpose of the agreement, unless sooner terminated by the Parties as provided herein.

VII. Dispute Resolution

- a. Step One – Negotiation. In the event of a dispute concerning any matter pertaining to this Agreement, the Parties involved shall attempt to address their differences by informal negotiation. The Party perceiving a dispute or disagreement persisting after informal attempts at resolution shall notify the other Parties in writing of the general nature of the issues. The letter shall be identified as a formal request for negotiation and shall propose a date for representatives of the Parties to meet. The

other Parties shall respond in writing within ten (10) business days. The response shall succinctly and directly set out that Party's view of the issues or state that there is no disagreement. The Parties 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 Party initiating dispute resolution. The representatives of the Parties shall meet in an effort to resolve the dispute. If a resolution is reached the resolution shall be memorialized in a memorandum signed by all Parties which shall become an addendum to this Agreement. Each Party will bear the cost of its own attorneys, consultants, and other Step One expenses. Negotiation under this provision shall not exceed 90 days. If a resolution is not reached within 90 days, the Parties shall proceed to mediation.

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

VIII. Termination of Agreement

This Agreement may be terminated upon mutual written agreement of the Parties.

IX. 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 any provisions shall be in the Superior Court of Thurston County.

X. Entire Agreement

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

XI. Recording

Prior to its entry into force, this Agreement shall be filed with the Thurston County Auditor's Office or posted upon the Parties' websites as provided by RCW 39.34.040.

XII. Counterparts

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

XIII. 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 with the United States Postal Service.

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: Rachael Jamison, Planning, Public Works and Environmental Director
Re: Sea Level Rise Response Plan Implementation
915 Washington Street NE
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 Parties and shall take effect on the date of the last authorizing signature affixed hereto:

CITY OF OLYMPIA

Steven J. Buiney, Interim City Manager

Date: _____

Approved as to form:



City Attorney

PORT OF OLYMPIA

Sam Gibboney, Executive Director

Date: _____

Approved as to form:

Port General Counsel

LOTT CLEAN WATER ALLIANCE

Michael Strub, Executive Director

Date: _____

Approved as to form:

Attorney for LOTT

Exhibit A – Near-term Projects Anticipated to be Jointly Implemented

Project Description	Olympia Sea Level Rise Response Plan Strategies	Joint or In-kind Funding Required?
Install backflow prevention on the Fiddlehead stormwater outfall	BITP-2	Joint Funding City/LOTT
Install backflow prevention on stormwater outfalls and other key pipes	CL-1; PL-1; BITP-2; PORT-1	Joint Funding
Coordinate emergency response	BITP- 1; OP-2; COL-4	In-Kind
<i>*Formalize SLR collaboration</i>	COL-1	<i>In-Kind</i>
Develop governance structure	COL-2	Joint Funding
Coordinate with USACE	COL-6	In-Kind
Investigate long-term public financing mechanism	FIN-1	Joint Funding
Investigate special district to finance resilience improvements	FIN-2	Joint Funding
Pursue State and federal funding	FIN-3	In-Kind
Incorporate SLR into other planning efforts	POL-3; POL-4	In-Kind
Develop and implement a SLR education and engagement strategy	ED-2	In-Kind
Continue education work with schools	ED-4	In-Kind
Conduct community workshops	ED-6	In-Kind
Outreach to business owners and Port tenants	ED-7	In-Kind
Refine SLR and flood monitoring strategy	IN-1	Joint Funding
Install local tide gauge	IN-1	Joint Funding and/or In-Kind
Monitor land subsidence	IN-2	Joint Funding
Initiate groundwater study	IN-3	Joint Funding
Model flow rates of stormwater outfalls	IN-7	Joint Funding and/or In-Kind

*Completed with execution of this Agreement