

**INTERLOCAL COOPERATION ACT AGREEMENT FOR  
WASTEWATER MANAGEMENT  
BY THE LOTT WASTEWATER ALLIANCE**

by and among

**City of Lacey, City of Olympia, City of Tumwater, and Thurston County  
("Partners")**

**November 5, 1999**

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**INTERLOCAL COOPERATION ACT AGREEMENT FOR  
WASTEWATER MANAGEMENT  
BY THE LOTT WASTEWATER ALLIANCE**

THIS AGREEMENT (“Agreement”), dated \_\_\_\_\_, 1999, is entered into by and between the City of Lacey, Washington (“Lacey”); the City of Olympia, Washington (“Olympia”); the City of Tumwater, Washington (“Tumwater”); and Thurston County, Washington (the “County”) pursuant to Chapter 39.34 RCW. The parties are herein individually referred to as “Partner” and collectively as the “Partners.”

RECITALS

WHEREAS, pursuant to the Intergovernmental Contract for Wastewater Facilities Management dated November 1976, as amended (“1976 Intergovernmental Contract”) the LOTT Partners have for more than two decades cooperated successfully in financing, constructing, maintaining and operating joint facilities to provide wastewater treatment and discharge services for the citizens of the urban area of northeast Thurston County; and

WHEREAS, said 1976 Intergovernmental Contract has been modified from time to time to provide for changing environmental and technical requirements, increased service demands and revised public health and environmental protection policies initiated by Partner governments, the Washington State Department of Ecology (“Ecology”) and the federal government; and

WHEREAS, since 1976, the Partners have managed the construction and expansion of wastewater treatment and discharge facilities for the region through The Advisory Committee (“TAC”) and have relied on Olympia as the lead agency for LOTT contracting and financing; and

WHEREAS, Olympia issued certain water and sewer revenue bonds (the “Bonds” as defined in Section 1.5) to provide funds to finance or refinance the Existing Facilities and local facilities, and, so long as the Bonds are outstanding, Olympia is obligated to comply with its covenants to owners of such Bonds, including covenants not to dispose of the Existing Facilities, as hereinafter defined, without repaying the Bonds or to take any action that would impact the tax-exempt status of the Bonds; and

WHEREAS, in March 1995, TAC authorized the development of a new comprehensive plan known as the LOTT Wastewater Resource Management Plan (“Plan”) to provide for the region’s future wastewater needs and initiated an environmental review process to assess all reasonable and feasible alternatives for wastewater management; and

WHEREAS, the Plan, as developed by LOTT with the assistance of community, Partner, and Ecology input, provides for the development of future treatment capacity on an incremental basis utilizing new joint use reclamation and groundwater recharge facilities located throughout

the LOTT service area but connected to the main LOTT treatment and marine discharge facilities; and

WHEREAS, the development of such new joint reclamation facilities must be planned and implemented on a cooperative basis so that increments of capacity are added no sooner than necessary but in sufficient time to meet NPDES permit limits and public health requirements; and

WHEREAS, to this point financing and contracting obligations for LOTT have been assumed by Olympia on behalf of the LOTT Partners; and

WHEREAS, the Partners have agreed that an independent, nonprofit corporate entity should be established pursuant to Chapters 36.34 and 24.03 RCW to enable LOTT to directly contract for the services and construction necessary to develop and manage new joint use facilities in response to the Plan; and

WHEREAS, the Partners will exercise control of the new non-profit corporate entity, called the "LOTT Wastewater Alliance" (or "LOTT Alliance"), through appointment of board members by and from their legislative bodies, who will represent their respective local governments; and

WHEREAS, by December 31, 1999, the Partners intend to transfer all joint use facilities developed or identified under the 1976 Intergovernmental Contract to the LOTT Wastewater Alliance and to terminate the 1976 Intergovernmental Contract, so that the LOTT System is exclusively managed by the LOTT Wastewater Alliance Board of Directors pursuant to this Agreement (a series of events termed "Consolidation");

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Partners hereby agree as follows:

# **ARTICLE I PURPOSE AND SCOPE**

## **Section 1.1 PURPOSE OF AGREEMENT**

The purpose of this Agreement is to provide for a new governance structure to carry out the Plan, which anticipates development of additional treatment capacity for the LOTT Partners through innovative wastewater reclamation and management facilities. The new facilities implemented pursuant to this Agreement, together with the facilities and improvements identified or developed as Existing Joint Facilities pursuant to the 1976 Intergovernmental Contract, shall be operated as a combined system for the benefit of all the Partners in the manner set forth herein.

The Partners intend to form a new nonprofit corporate entity, to be known as the LOTT Wastewater Alliance, pursuant to Chapter 39.34 and Chapter 24.03 RCW. The LOTT Wastewater Alliance shall be solely controlled by Partner representatives and its primary function shall be to carry out the public purposes expressed in the Plan and this Agreement, as both may be amended or supplemented from time to time. The Partners intend for the LOTT Wastewater Alliance to function as a regional agency that provides wholesale wastewater resource treatment and management services in the public interest.

The Partners intend to consolidate the ownership and management of all Existing Joint Facilities and related properties and interests in the LOTT Wastewater Alliance so that the entire LOTT System is under its sole management and control. This “Consolidation” can occur only after the Bonds have been paid or defeased and when it is otherwise legally feasible. The Partners herein commit to work together in good faith, to use their best efforts, and to take all necessary actions to accomplish Consolidation as provided herein. The Partners recognize that a transition period will be necessary to identify and accomplish all required and appropriate Consolidation steps and to coordinate the assumption by the LOTT Board of TAC responsibilities and legal obligations related to the LOTT System. The 1976 Intergovernmental Contract, as amended, will continue in effect until the Consolidation is completed as determined by the LOTT Board, and then the 1976 Intergovernmental Contract will terminate.

## **Section 1.2 COMMITMENT & ACCESS TO JOINT FACILITIES**

Consistent with their covenants in the 1976 Intergovernmental Contract, in this Agreement the Partners commit to deliver all sewage flows in their Local Systems within the LOTT Plan area (see Exhibit E) to the Joint Facilities for treatment and disposal or reuse. Each Partner foregoes the opportunity to treat and dispose or reuse its sewage flows individually and decides to share control of access to and capacity in sewerage facilities within its community. Because this Agreement and the 1976 Intergovernmental Contract contemplate that all Partners will be using Joint Facilities and because most, if not all, Partners will be transporting sewage flows collected in their Local Systems through the political jurisdictions of one or more other Partners, the Partners declare and confirm i) that this Agreement is not intended as an instrument to permit one Partner to control the sewer collection services furnished by another Partner, and ii) that each Partner will cooperate to provide the others with access for sewage flow to the Joint

Facilities either by sharing Local System capacity, if reasonably available, or by facilitating the acquisition of necessary rights-of-way, franchises, and permits through and under public streets, rights-of-way, and property under reasonable conditions for such access.

### **Section 1.3 PARTNER CONTRIBUTIONS**

The Partners recognize that they have jointly developed and maintained the LOTT System to serve all the Partner governments. Although precise legal and equitable interests of the Partners in specific Existing Joint Facilities cannot be defined, the Partners hereby reconfirm that they each have an unquantified interest in the Existing Joint Facilities based on the rights and obligations of all Partners under the 1976 Intergovernmental Contract and past financial contributions to the development, operation and maintenance of the facilities. In this Agreement, the Partners commit to transfer all right, title and interest in and to Existing Joint Facilities to the LOTT Wastewater Alliance. In consideration for the mutual promises and covenants and establishment of a new LOTT governance structure, each Partner waives all potential claims against the other Partners as to ownership of Existing Joint Facilities and as to monetary reimbursement or compensation arising from the ownership of Existing Joint Facilities or its transfer to the LOTT Wastewater Alliance, except for the purchase of City of Lacey facilities as provided in the Agreement Regarding Additional LOTT Joint Facilities of June 21, 1999 (see Exhibit I).

### **Section 1.4 CONTRACT DOCUMENTS**

The following exhibits are incorporated by reference into this Agreement as though fully set forth herein:

- Exhibit A — List of all agreements comprising the 1976 Intergovernmental Contract
- Exhibit B — List of Existing Joint Facilities
- Exhibit C — Articles of Incorporation of LOTT Wastewater Alliance
- Exhibit D — Bylaws of LOTT Wastewater Alliance
- Exhibit E — LOTT System Service Area (Urban Growth Area Boundary, Ch. 36.70 RCW)
- Exhibit F — Allocation of Costs to New Connections and Monthly Rates
- Exhibit G — LOTT Discharge and Industrial Pretreatment Regulations
- Exhibit H — O & M Contract
- Exhibit I — Agreement Regarding Additional LOTT Joint Facilities of June 21, 1999

Exhibit J — Intergovernmental Contract for Inflow and Infiltration Management and New Capacity Planning of March 27, 1995

Exhibit K — Interlocal Cooperation Agreement Between Thurston County and the Cities of Lacey, Olympia, and Tumwater Regarding Joint Wastewater Flow Reduction and Water Conservation Projects of May 28, 1997 (with attachments)

Exhibit L — Administrative and Treasury Services Contract

## **Section 1.5 DEFINITIONS**

For purposes of this Agreement, the following terms shall have the meanings set out below.

“Bonds” means City of Olympia Water and Sewer Revenue Refunding Bonds, 1993 (LOTT Series), Water and Sewer Revenue Bonds, 1997A and Water and Sewer Revenue Refunding Bonds, 1997 (Series B).

“Capacity Development Charge” means the one-time connection charge collected at issuance of building permit for each new connection to a Local System or directly to the LOTT System.

“Consolidation” means the point at which the LOTT Wastewater Alliance has been formed and is capable of functioning as an independent wastewater treatment and management entity and all significant steps necessary to concentrate ownership or control of Existing Joint Facilities and the LOTT System in the LOTT Wastewater Alliance, including defeasance of the Bonds, have been accomplished.

“Debt Service” means the principal of, interest on, sinking fund requirements, reserve account requirements and any coverage requirement required by a resolution authorizing the issuance of LOTT Debt.

“Equivalent Residential Unit” or “ERU” means:

- 1) One separate single family residence;
- 2) With respect to residential duplexes, one per single family unit;
- 3) With respect to each residential structure having more than two single family residential units, each single family unit shall equal 0.70 ERU (or, for these structures, one ERU equals 1.43 single family units);
- 4) With respect to mobile home and trailer parks, one per each mobile home or trailer unit; or
- 5) With respect to the Wastewater Service Charge for uses other than residential uses, the monthly discharge of sewage in units of 900 cubic feet measured at the source either by water consumption or sewage discharge, and with respect to determining the ERU number used to calculate the Capacity Development charge for other than

residential uses, the monthly discharge of sewage in units of 900 cubic feet estimated pursuant to guidelines established by the Advisory Committee and based on the then current or most recent experience of the type and character of the proposed service requested.

“Existing Joint Facilities” means any “Joint Facilities” as defined in or developed pursuant to the 1976 Intergovernmental Contract that are in existence and operation or are designated as LOTT Joint Facilities as of the effective date of this Agreement. The Existing Joint Facilities are identified in Exhibit B.

“General Pretreatment Regulations” shall mean the United States Environmental Protection Administration General Pretreatment Regulations for existing and new sources as set forth in 40 CFR part 403.

“I/I Study” means the LOTT Infiltration and Inflow Removal Study (Gibbs & Olson 1994).

“Joint Facilities” means Existing Joint Facilities and LOTT Wastewater Alliance Joint Facilities.

“Joint Facilities Maintenance and Operation Expenses” means all costs and expenses relating to labor, fringe benefits, power, light, water, heat, chemicals, equipment including repair and replacement thereof, tools, materials, supplies, insurance premiums, contract services, inspections and taxes and “in lieu of taxes” directly and properly chargeable to the operation and maintenance of the Joint Facilities plus administrative overhead expenses, and any other similar costs chargeable to the Joint Facilities.

“LOTT Wastewater Alliance Joint Facilities” means all sewerage or wastewater treatment or reclaimed water facilities or conveyance acquired or developed after the effective date of this Agreement by the LOTT Wastewater Alliance including but not limited to trunk sewer lines, sewage pumping stations, sewage force mains, sewage treatment facilities and outfall lines, resource management basins, reclamation and groundwater recharge facilities, flow reduction improvements, and other improvements, properties, rights, or interests used or useful in the conveyance, treatment, disposal, storage, or management of sewage or wastewater flows or reclaimed wastewater or water products, including any appurtenances thereto, and any improvements or replacements of Existing Joint Facilities.

“Local System” means sewer or wastewater facilities other than Joint Facilities that are owned or operated by a Partner for the local collection, pretreatment, transmission, and delivery of sewage or wastewater flows to Joint Facilities.

“LOTT” means the LOTT Partnership created by the 1976 Intergovernmental Contract and the LOTT Wastewater Alliance created pursuant to this Agreement, and the “LOTT System” means all Joint Facilities that are owned, operated, or controlled by one or more of the Partners or by LOTT or that are used or useful in the performance of LOTT’s

functions, including all contracts, permits, rights, and interests that are necessary or useful for operation of said facilities.

“LOTT Board” or “Board of Directors” means the board of directors created pursuant to Chapter 24.03 RCW to manage and oversee the LOTT Wastewater Alliance non-profit corporation.

“LOTT Debt” means any notes, bonds or other obligation of the LOTT Wastewater Alliance issued to finance or refinance improvements, betterments, or extensions to Joint Facilities or any other costs related to the LOTT System and the State of Washington loan to LOTT, evidenced by the Olympia Water and Sewer Revenue Bonds (1992) ultimately issued in a principal amount of \$36,579,836.19.

“LOTT Discharge and Industrial Pretreatment Regulations” shall mean the regulations attached as Exhibit G to this Agreement, which may be amended from time to time by a unanimous vote of the LOTT Board.

“LOTT System” (see “LOTT”)

“LOTT Wastewater Alliance” or “LOTT Alliance” means the non-profit corporation to be created by the Partners pursuant to Chapter 24.03 RCW and this Agreement.

“1976 Intergovernmental Contract” means the Intergovernmental Contract for Wastewater Facilities Management, dated November 30, 1976, together with all later amendments, all of which are listed in Exhibit A.

“O & M Contract” means the agreement for operation and maintenance of the wastewater treatment plant and other Joint Facilities to be entered by the LOTT Wastewater Alliance and Olympia pursuant to Section 10.3.

“Plan” means the LOTT Wastewater Resource Management Plan dated November, 1999 and approved by the Partners, as may be amended from time to time.

“TAC” means The Advisory Committee formed pursuant to the 1976 Intergovernmental Contract that operates to advise the development and operation of Existing Joint Facilities.

“TSC” means the Technical Subcommittee formed by TAC in response to the requirements of the 1976 Intergovernmental Contract and also made part of the LOTT Wastewater Alliance. The TSC is composed of one public works executive manager from each Partner; the person responsible for management of LOTT treatment plant and facility operations; the LOTT staff engineer; and the LOTT administrator appointed by TAC or the LOTT Board. The LOTT administrator shall chair the TSC.

“Wastewater Service Charge” means the LOTT monthly rate charged for each Equivalent Residential Unit (ERU) connected to Local Systems or directly to the LOTT System.

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## **ARTICLE II**

### **LOTT WASTEWATER ALLIANCE: NONPROFIT CORPORATION GOVERNANCE**

#### **Section 2.1 LOTT WASTEWATER ALLIANCE**

As soon as practical after this Agreement takes effect, the Partners shall act to form a nonprofit corporation under Chapter 24.03 RCW to be formally called the “LOTT Wastewater Alliance.” A form of articles of incorporation and bylaws are attached as Exhibits C and D respectively, and the Partners shall use articles of incorporation and bylaws substantially in the form set out in Exhibits C and D to create the nonprofit corporation.

#### **Section 2.2 POWERS.**

The LOTT Wastewater Alliance, an independent legal entity, acting through its Board of Directors and duly authorized employees and agents, shall have all the powers of a nonprofit corporation organized under Chapter 24.03 RCW. Among its powers, the LOTT Wastewater Alliance shall have the full power and authority to:

- a)** Acquire, construct, receive, own, manage, lease, sell, and otherwise dispose of real property, personal property, intangible property, and Joint Facilities;
- b)** Plan, develop, replace, operate and maintain Joint Facilities;
- c)** Enter into contracts for goods, services, work, or other benefits to the LOTT Wastewater Alliance;
- d)** Borrow money and issue debt instruments or provide for the borrowing of money and issuance of debt instruments;
- e)** Receive gifts or grants for the planning, design, development, construction, or operation of Joint Facilities, or assets or programs to further LOTT’s purposes, or for other purposes necessary to carry out LOTT’s purposes;
- f)** Lend money or provide services or facilities to any Partner or other governmental utility or governmental service provider in furtherance of LOTT’s purposes;
- g)** Invest its funds;
- h)** Sue and be sued;
- i)** Hire and fire employees of the LOTT Wastewater Alliance;
- j)** Fix salaries, wages and other compensation of officers and employees;

- k) Employ or retain engineering, legal, financial or other specialized personnel and consultants as may be necessary to carry out the purposes of the LOTT Wastewater Alliance;
- l) Impose, alter, regulate, control, and collect rates, charges, and assessments;
- m) Purchase insurance and participate in pooled insurance and self-insurance programs;
- n) Indemnify the Partners and their officers and employees in accordance with law;
- o) Establish policies, guidelines, or rules to carry out its powers and responsibilities;
- p) Exercise all other powers within the authority of and that may be exercised individually by all of the Partners with respect to sewage or wastewater conveyance, treatment, disposal, reclamation, reuse, conservation, or other LOTT purposes or functions as set forth herein; and
- q) Take any other actions as the LOTT Board deems necessary to implement the Plan, to protect and advance the interests of the LOTT System, its Partners, and its ratepayers that are consistent with this Agreement, Chapter 39.34 RCW, and other applicable law.

**Section 2.3 PUBLIC ACCOUNTABILITY.**

The Partners intend for the LOTT Wastewater Alliance to operate and function as a public agency. The LOTT Board shall conduct its deliberations and take action openly. Therefore, the LOTT Wastewater Alliance shall operate and conduct its business subject to the Open Public Meetings Act (Ch. 42.30 RCW, as may be amended), the Public Disclosure Act (Ch. 42.17 RCW, as may be amended), local government accountancy statutes (RCW 43.09.200 et seq., as may be amended), and other applicable laws, regulations, and self-imposed policies.

**Section 2.4 NO EFFECT ON PARTNER POLICE POWERS.**

Nothing in this Agreement shall be deemed to limit the exercise of a Partner’s police or regulatory powers as may be required or allowed by law. The Partners herein confirm that the LOTT Board has no local land use authority to direct growth or development within the LOTT service area as shown on Exhibit E. Instead, the LOTT Board shall manage the LOTT System in a way that is responsive to local land use planning and sewerage plans adopted by the Partners within LOTT’s service area and consistent with applicable state and federal laws. However, the LOTT Board may comment on proposed changes by Partners to their land use plans and zoning codes where such changes could affect the amount, timing or characteristics of sewage or wastewater flows to be treated by the LOTT System.

**Section 2.5 LOTT BOARD**

**a) Composition.** The Board of Directors for the LOTT Wastewater Alliance shall consist of four (4) Directors and four (4) alternate Directors. One Director and one alternate Director shall be appointed by and from the legislative bodies of Lacey, Olympia, Tumwater and

Thurston County. The Director and alternate Director of each Partner appointed to the LOTT Board shall serve at the will and discretion of the legislative body of that Partner. Any Partner may remove its Director or Alternate Director from the LOTT Board at any time. In the event that a Partner's Director or alternate Director is so removed, is no longer qualified to serve on, or otherwise departs from the LOTT Board, that Partner's legislative body shall promptly appoint a new Director or alternate Director to the LOTT Board. It is the Partners' intent that a representative on the LOTT Board will represent his or her Partner local government in voting and acting as a LOTT Board member.

**b) Local government representation.** The Partners hereby agree that legislative oversight by their respective local governments shall not be required for any LOTT Board decisions in the management and operation of the LOTT System, except as expressly provided herein. LOTT Board members shall represent the interests of their respective local governments in carrying out their responsibilities to act in the best interests of the LOTT Wastewater Alliance.

**c) Procedures and voting.** Each Director shall have one vote. A Partner's alternate Director shall vote in place of that Partner's Director when the Director is absent or unavailable or when the Director position is vacant. Alternate Directors may also vote to resolve tie votes as provided below. The LOTT Board shall establish procedures for conducting its meetings consistent with Roberts Rules of Order and its decisions shall be by a majority vote except when a unanimous vote is required, as provided below.

**d) Tie votes.** In the event of a tie vote by the LOTT Board, the LOTT Board shall 1) randomly choose one alternate Director, and 2) table the matter to the following LOTT Board meeting which shall be scheduled as a special or regularly scheduled meeting within the next twenty-one (21) days or as soon thereafter as all LOTT Directors can be present together with the alternate Director randomly chosen to assist in resolving tie votes. At this meeting, all LOTT Directors, including the alternate Director chosen, shall participate in the discussion and voting on the matter or related matters until such time as the issue previously resulting in a tie vote has been resolved by a majority affirmative vote, defeated by a majority, or otherwise resolved. The LOTT Board shall select the alternate Director to resolve a tie vote by a random drawing of the Partners' names from a hat or other container; however, no Partner's alternate Director shall serve as a tie breaker in two consecutive tie vote matters.

**e) Unanimous votes.** For the actions that require unanimous votes identified below, proposed LOTT Board resolutions or motions must be distributed to the Clerk of each Partners' legislative body at least eighteen (18) calendar days in advance of final action by the LOTT Board. The following actions shall require unanimous votes by the LOTT Board:

**i)** Approval or amendment of the Plan;

**ii)** Revisions in the Articles of Incorporation or Bylaws or dissolution of the LOTT Wastewater Alliance non-profit corporation;

iii) Revision of the allocation of costs as to new connection charges and monthly rates; the allocation of costs in effect as of the effective date of this Agreement is set forth in Exhibit F;

iv) Modification or amendment of the LOTT Discharge and Industrial Pretreatment Regulations pursuant to Section 7.1 of this Agreement; and

v) Establishment or modification of pretreatment permit fees, charges, and actions pursuant to Section 7.2 of this Agreement.

**f) Local government review and comment.** The LOTT Board shall, in a timely manner, solicit the review and comment by its Partner local governments of proposed changes in LOTT comprehensive plans, annual budgets and annual capital programs. The LOTT Board shall consult with a Partner local government on any specific Joint Facility capital project proposed within the Partner jurisdiction prior to approving the final design for such project.

## **Section 2.6 COMMITTEES**

The LOTT Board may form and convene committees and advisory bodies as it deems appropriate for Partner review and comment, public input, efficient staff and Board work, and other purposes. Initially, until the LOTT Board directs otherwise, the following standing committees shall exist to advise the LOTT Board: i) the Technical Subcommittee (“TSC”), and ii) the Legal Committee composed of an attorney chosen by each Partner and the LOTT Wastewater Alliance legal counsel to review legal matters as from time-to-time directed by the LOTT Board.

## **Section 2.7 BOOKS AND RECORDS.**

Any member of the LOTT Board or a representative of such member may examine the books and records of any Partner or of the LOTT Wastewater Alliance that relate to the Joint Facilities, the administration thereof, this Agreement, or the 1976 Intergovernmental Contract. After provision of reasonable notice, such books and records may be examined at any reasonable time during business hours of that Partner. The LOTT Board may appoint an auditor or accountant to review any such books and records and the costs of such review shall be charged to LOTT which in turn may include such costs as a Joint Facilities Maintenance and Operations Expense.

## **ARTICLE III**

### **LOTT WASTEWATER ALLIANCE: FINANCE**

#### **Section 3.1 LOTT RATES & CHARGES**

The LOTT Wastewater Alliance shall establish rates and collect fees for wastewater service that will be at least sufficient to pay the expenses of maintenance and operation of the LOTT System and will meet the principal, interest and coverage requirements and other bond covenants of all obligations issued by the LOTT Wastewater Alliance or by a Partner on behalf of the LOTT Wastewater Alliance that are related to improvements and extensions to the LOTT System or refunding bonds issued for the LOTT System and that constitute a charge upon the revenue of such system.

#### **Section 3.2 PARTNER COVENANTS TO MAKE PAYMENTS**

**a) Covenants to make payments.** In consideration for the LOTT Wastewater Alliance maintaining and operating the Joint Facilities and as a condition for use thereof and service therefrom, each Partner irrevocably covenants, obligates and binds itself to timely bill, collect and pay the Wastewater Service Charge and the Capacity Development Charge provided for in this Article III. All such payments shall be made at the times and in the manner provided in this Article III. All such payments shall be made out of the gross revenues of each Partner's Local System or combined water/sewer system. Each Partner shall pay its share of costs attributable to Debt Service on and other costs associated with LOTT Debt throughout the term of this Agreement whether or not the Joint Facilities or the LOTT System is operating or operable and notwithstanding the performance or nonperformance of this Agreement by any Partner. Nothing in this Agreement shall be interpreted to cause the LOTT Wastewater Alliance not to charge the Partners for Debt Service or to relieve a Partner from paying its share of Debt Service.

**b) Wastewater Service Charge.** Commencing with the first complete month in which sewage flows are collected and delivered by the Partners to LOTT, each Partner shall pay to the LOTT Wastewater Alliance the Wastewater Service Charge established by the LOTT Board. Initially this uniform charge is \$25.50 per month per ERU as approved by the LOTT Partners and made effective January 1, 1993. At least annually and more frequently as necessary, the LOTT Board shall consider the Wastewater Service Charge and confirm or adjust the amount of the Wastewater Service Charge as needed to cover costs. The Wastewater Service Charge paid by each Partner is based on the number of ERUs connected to its Local System, determined as follows.

**i) Reporting and Payment of ERU count.** By the 25th day of each month each Partner shall deliver to LOTT a statement specifying the amount of Wastewater Service Charge revenue collected and remitted to LOTT and the number of ERUs served or billed by it as of the last day of the immediate preceding month. An ERU shall be counted if it is either connected to or billed for availability of use by Local Facilities. If any Partner fails to furnish such count in a timely manner, LOTT may estimate such ERU count and bill that Partner according to that estimate. Any Partner by giving reasonable notice may examine the books and records of any

other Partner to determine the basis for the computation of any ERU figure used by that examined Partner. No dispute over any such charges shall relieve a Partner from its duty to pay a monthly bill. In the event an adjustment or correction must be made, it shall be effective for a credit or additional charges in the next succeeding month. In order to keep count of ERUs each Partner shall cause all nonresidential users to install meters measuring either all water usage or sewage discharge. Any Significant Industrial User (see Exhibit G Section 2 (JJ)) not covered by an Industrial Pretreatment Permit and covered by a separate discharge contract with any Partner or with the LOTT Wastewater Alliance shall have charges paid and reported consistent with its discharge contract and shall be exempt from the ERU requirements of this section.

**ii) ERU payment reduction.** A Partner may reduce the Wastewater Service Charge for each ERU qualifying under the Partner's sewer rate reduction program for elderly and handicapped low income persons, provided the program is consistent with applicable State law and regulations. The reduction in ERU payment will be equal to the percentage reduction allowed of the Partner's sewer collection system rate per ERU, but in no event may the reduction in ERU payment exceed 50% per qualifying ERU.

**c) Capacity Development Charge.** Each Partner shall collect a LOTT Wastewater Alliance Capacity Development Charge equal to the amount established by the LOTT Board for every additional structure connected to its Local System beginning with the effective date established by the LOTT Board. Upon change in the character in use of any structure connected to a Local System resulting in significantly increased sewage discharge, an additional LOTT Wastewater Alliance Capacity Development Charge shall be collected so as to account for actual use, giving appropriate credit for connection charges already paid. All Capacity Development Charges shall be paid to LOTT with the Partner's next monthly payment following the month in which the charges are collected. Initially the Capacity Development Charge is \$3,000.00 per ERU as approved by the LOTT Partners and made effective July 1, 1999. At least annually and more frequently as necessary, the LOTT Board shall consider the Capacity Development Charge and confirm or adjust the amount of the Capacity Development Charge as needed to cover costs of additional conveyance, treatment and management capacity.

**d) Local System Expenses.** The Wastewater Service Charge shall be deemed a maintenance and operation expense to the maximum extent possible under existing bond resolutions and ordinances and shall expressly be made a part of the maintenance and operation expenses of the Local Systems of each Partner in any future bond issue or other financing payable in whole or in part from the revenues of such systems and shall be payable and constitute a charge prior and superior to any charge or lien of any revenue bonds, or any obligation, issued by the Partners payable from the net revenues (gross revenues less operations and maintenance expenses) of their respective systems.

### **Section 3.3 PARTNER COVENANTS TO MAINTAIN CHARGES**

Each Partner irrevocably covenants and agrees to establish rates and collect fees for sewer service or sewer and water service, in the case of a combined utility, that will be at least sufficient to pay the charges to the LOTT Wastewater Alliance and to pay the other maintenance and operation expenses of their respective Local Systems.

### **Section 3.4 PARTNER BONDS**

a) **Future water and sewer bonds.** On and after the effective date of this Agreement, no Partner shall issue any debt secured by existing or future LOTT sewerage charges or connection revenue, Joint Facilities, or any other LOTT revenues or assets; however, with the approval of the LOTT Board a Partner may issue such debt on behalf of or for the benefit of the LOTT Wastewater Alliance.

b) **Outstanding local bonds.** It is recognized that Olympia, Tumwater and Lacey presently have outstanding revenue bonds payable in whole or in part from the net sewer revenue of their Local Systems. Nothing in this Agreement is intended or shall be construed to violate any covenant of these outstanding bonds, and such covenants, to the extent there is a conflict between them and this Agreement, shall control with respect to such outstanding bonds and any debt issued on a parity with such bonds and required to have the same covenants as the outstanding bonds.

### **Section 3.5 BILLINGS AND PAYMENTS**

For all charges prescribed in this Article III, the LOTT Wastewater Alliance shall bill each Partner on the first day of each calendar month for charges accrued to the first day of the immediately preceding month, unless already paid as provided in Section 3.2. Each Partner shall pay such charges so billed by the twentieth day of the month such bill is received, after which time such billing shall be delinquent. Charges omitted in one month may be billed in the following months. Delinquent charges shall accrue interest on the unpaid balance at a rate equal to the current one year Treasury Bill rate plus 1% from date of delinquency until paid.

### **Section 3.6 ADMINISTRATIVE AND TREASURY SERVICES**

As provided in Section 11.4, the LOTT Wastewater Alliance and Olympia shall enter into an Administrative and Treasury Services Contract to provide for Olympia to continue to provide such services for an initial period of time. Prior to giving notice of termination of all or part of the Administrative and Treasury Services Contract, the LOTT Board shall consider and document Olympia's and alternative administrative and treasury service costs and practices. After this consideration, the LOTT Board shall determine whether to continue under the Administrative and Treasury Services Contract, to terminate all or part of the Administrative and Treasury Services Contract and make other arrangements for such services, or take such other action as the Board finds necessary and appropriate. After the Administrative and Treasury Services Contract terminates, the LOTT Wastewater Alliance may, in its sole discretion, decide to operate and maintain the administrative and treasury services through its own staff or through a contract or contracts with others, including any of the Partners.

The LOTT Board shall control and direct the disposition of all LOTT funds and monies. The contractor shall establish a separate fund to hold LOTT funds, establish special accounts within the LOTT Fund, and keep separate and adequate books and records of the same, all as required by law and regulations of the State Auditor and as the LOTT Board may direct. The

contractor shall also be responsible for investment of LOTT funds consistent with the investment policy adopted by the LOTT Board.

**Section 3.7 LOTT BUDGETING**

**a) Annual LOTT budget.**

i) By each June 1, the LOTT Board shall notify each Partner of its proposed budget and capital improvement program for the Joint Facilities showing its estimate of the debt service and reserve requirements for debt obligations incurred to finance the LOTT Existing Joint Facilities, LOTT Wastewater Alliance Joint Facilities, Joint Facilities Maintenance and Operation Expenses, and the coverage requirements of such obligations per ERU for the ensuing calendar year and shall furnish forthwith to those Partners upon request for inspection the data and records supporting such estimate. Each Partner shall furnish LOTT with its recommendations and comments by July 31. Thereafter LOTT shall adopt its final annual budget and capital improvement program for the forthcoming calendar year on or before August 31. Subject to adjustment as provided in this subparagraph, the ERU charges for the Partners under this subparagraph shall be based on the final budget.

ii) By March 1 of each year, LOTT shall determine and notify the other Partners of the actual debt service and reserve requirements of the LOTT Debt, the actual Joint Facilities Maintenance and Operation Expenses, the actual requirements for LOTT Wastewater Alliance obligations and any other payment requirements for the immediately preceding calendar year, or part thereof, covered by this Agreement.

iii) The annual schedule of budget events is summarized as follows:

|                         |  |
|-------------------------|--|
| March 1 <sup>st</sup>   | Notice of previous year's reconciliation   |
| March 15 <sup>th</sup>  | Preliminary flow estimate for next calendar year provided by LOTT  |
| April 15 <sup>th</sup>  | Partners respond to preliminary flow estimates for next calendar year  |
| May 1 <sup>st</sup>     | LOTT provides final flow estimate for next calendar year   |
| June 1 <sup>st</sup>    | LOTT provides proposed budget and capital improvement program for next calendar year   |
| July 31 <sup>st</sup>   | Partners and public comment on proposed LOTT budget and capital improvement program for next calendar year                         |
| August 31 <sup>st</sup> | LOTT adopts budget and capital improvement program for next calendar and advises Partners of LOTT rates to take effect January 1st |

iv) To respond to special circumstances, the LOTT Board shall have the authority to alter the annual budget schedule in a given year.

**b) LOTT Joint Facilities budget adjustments.** The LOTT Wastewater Alliance shall operate within its annual budget. Should debt service and reserve requirements for the LOTT Debt, or Joint Facilities Maintenance and Operation Expenses, or coverage requirements increase above budget estimates, or should the money in the Operations Account of the LOTT Joint Facilities Fund or the LOTT Wastewater Alliance Joint Facilities Fund be insufficient to meet and pay those requirements and expenses in that calendar year, the LOTT Wastewater Alliance may amend its budget and increase the Wastewater Service Charge after first submitting the proposed budget amendment and Wastewater Service Charge increase to the Partners for comments.

### **Section 3.8 SHORT-TERM FINANCIAL ASSISTANCE FOR EMERGENCY SEWER REPAIRS**

**a)** Upon request from a Partner, the LOTT Wastewater Alliance shall consider providing short-term financial assistance to any Partner facing an emergent need to repair or replace failed sewer facilities when that emergency involves a threat to public health or public safety, poses a significant threat to the natural environment, or presents a threat to or operational difficulty for the LOTT System. In dealing with such emergencies, time is of the essence. The temporary financing is intended to provide financial assistance between the time of the emergency and the time when the requesting Partner has opportunity to secure other financing. It is understood the requesting Partner will make all reasonable efforts to effectively use its own financial resources and any other available funding to assure minimum use of assistance from LOTT.

**b)** LOTT resources available for use in providing emergency repair assistance to a requesting Partner shall be limited to LOTT funds in excess of that required by bond covenants and other debt and that which is not otherwise committed or programmed according to the adopted current LOTT budget and Capital Improvement Program during the term of the requested temporary financing. The amount of the requested temporary financing may not exceed the total cost of the engineering and construction of repairs necessary to restore sewer service, end the public health or safety emergency, end the threat to the natural environment, or end the threat to or operational difficulty for Joint Facilities plus the cost of liquidation losses and interest as provided herein.

**c)** Temporary financing for emergency repairs may be extended for a term of up to eighteen months from the time of first withdrawal at which time it will be due and payable in full including the principal amount, the added cost of losses due to liquidation, and all interest. Any Partner using LOTT funds under this Section 3.8 is subject to the same obligations for payment as for the charges set forth in this Article III.

**d)** The Partners hereby recognize that, due to the emergency nature of the financial assistance covered by this agreement, invested LOTT money may be subject to losses due to liquidation of investments as a result of providing for temporary financing assistance. Every reasonable effort will be made to avoid such losses; however, the amount of these losses will be added to the principal amount of the temporary financing and will be subject to interest charges as described herein.

e) Interest will be charged on temporary financing for emergency repairs at a rate equal to the net earnings rate of the State of Washington Local Government Investment Pool. The interest period will begin with the effective date of the issuance of funds to the requesting Partner.

f) Because time is of the essence when dealing with temporary financing for emergency sewer repairs, the following procedure will guide processing of a request. First, the requesting Partner will, by letter addressed to the LOTT Board, describe the emergency for which a temporary financing is being requested, state the amount requested, and propose a date to meet with LOTT and its treasurer to negotiate a schedule of dates and amounts of withdrawals and repayment. If time permits, the LOTT Board may refer the request to a committee for review and recommendation. In any event, the LOTT Board shall attempt to act on the request in a timely fashion.

### **Section 3.9 TAXES**

In recognition of the LOTT Wastewater Alliance as a public entity, the Partners shall not impose any tax on the gross receipts of the LOTT Wastewater Alliance. Each Partner may levy a gross receipts tax on its utility, including receipts representing the Wastewater Service Charge.

## **ARTICLE IV LOTT WASTEWATER ALLIANCE: WASTEWATER CONVEYANCE AND TREATMENT**

### **Section 4.1 LOTT SERVICE OBLIGATION IN SERVICE AREA**

LOTT shall accept all Partner sewage flows delivered to Joint Facilities within the LOTT System service area (shown on Exhibit E), subject to the conditions and limitations stated herein. The service area shall be the Lacey-Olympia-Tumwater Urban Growth Area in effect when this Agreement takes effect. The LOTT Wastewater Alliance shall not directly accept sewage or wastes from any person, firm or corporation that is located within the boundaries of or is delivering its sewage flows to the Local System of a Partner without the written consent of that Partner.

If the Lacey-Olympia-Tumwater Urban Growth Area is expanded beyond that shown on Exhibit E, the LOTT System service area shall be expanded only if the Partner requesting the expansion remits a connection charge that includes all capacity development costs including those otherwise allocated to monthly rates (Wastewater Service Charge). The foregoing sentence shall not apply to service expansions outside the Lacey-Olympia-Tumwater Urban Growth Area that correct identified health hazards or water quality problems in high density developments consistent with the Thurston County Sewerage General Plan of 1990, and the cost of such expansions shall be allocated pursuant to Exhibit F.

### **Section 4.2 PARTNER OBLIGATION TO DELIVER FLOWS**

Each Partner shall deliver all sewage and wastewater flows collected by its Local System to the LOTT System. Each Partner shall deliver its Local System flows at such locations in the LOTT System and pursuant to such connection procedures and other terms and conditions as may be established by the LOTT Board. Except as provided in Section 4.4 of this Agreement, a Partner shall not deliver sewage or wastewater flows generated in the LOTT System service area to an agency other than LOTT for treatment and disposal or treat such flows at its own sewage treatment facilities without the consent of the LOTT Board.

### **Section 4.3 LOTT SYSTEM CAPACITY**

**a) Acceptance of Partner flows.** The LOTT System shall be available to receive and treat sewage flows delivered to Joint Facilities by the Partners so long as the LOTT System has capacity to accept, treat, and manage such flows. The LOTT Wastewater Alliance shall use its best efforts to provide for increased capacity pursuant to the Plan, in a manner designed to allow the LOTT System to accept, treat, and manage all flows proposed to be delivered to the Joint Facilities by the Partners. Flows from the Partners' Local Systems shall be accepted on a "first-come, first-served" basis. The LOTT Board shall have the authority to limit flows from the Partners only to ensure preservation of public health and compliance with applicable laws, regulations, permits and provisions of the LOTT Plan. However, in the event that flows are proposed from a single non-residential user which will impair, for a significant period of time,

any Partner's capacity to accommodate growth projected by the Thurston Regional Planning Council in its service area, the LOTT Board shall have the authority to delay the delivery of flows or portions thereof from the single non-residential user until, through the best efforts of the LOTT Board, a plan is in place which will be implemented in time to avoid such projected impairment. Any such flow limitation shall not in any way excuse or reduce any Partner's obligation to make payments to the LOTT Wastewater Alliance under this Agreement.

**b) Annual flow predictions.** The LOTT Board shall annually provide to the Partners by March 15<sup>th</sup> a preliminary estimate of flows to be produced within each Partner local government during the following calendar year based on data from the Thurston County Regional Planning Council forecasting population and employment. Each Partner, within thirty (30) days of receipt of the estimate, shall a) estimate and provide to LOTT the expected building activity within its jurisdiction for the following calendar year based on plats and/or building permits approved or pending immediate approval and b) provide to LOTT any other information that it would like LOTT to consider in establishing a final estimate of the capacity available during the following calendar year. After receiving such comments and information from the Partners, the LOTT Board shall publish a final estimate no later than each May 1<sup>st</sup> identifying the total estimated capacity available for the following year in the LOTT System and the percentage of such capacity expected to be utilized during such year.

**c) No default.** The LOTT Wastewater Alliance shall not be in default of its obligations under this Agreement or any other intergovernmental contract in the event that the LOTT Board determines that insufficient capacity exists to accept, treat, and manage sewerage flows, despite using best efforts to develop sufficient capacity. The existence of a capacity constraint or the unavailability of additional capacity shall not excuse or reduce any Partner's obligation to make payments to the LOTT Wastewater Alliance under this Agreement.

#### **Section 4.4 PARTNER OPTIONS IN THE EVENT OF CAPACITY CONSTRAINT**

In the event that the LOTT Board limits additional Partner flows to the LOTT System pursuant to Section 4.3, the following exclusive remedies are available to the Partners, but only for the duration of such limitation.

i) A Partner may deliver additional sewage flows to an agency other than LOTT for treatment and disposal; and

ii) A Partner may develop its own sewage treatment facilities to serve new demand; provided that such facilities are sized no larger than reasonably necessary to serve customers connecting during the expected duration of the capacity constraint.

The foregoing remedies are the exclusive remedies available to a Partner as to the LOTT Wastewater Alliance and the other Partners in the event of a LOTT System capacity constraint, except that the Partners shall not be limited to such exclusive remedies in the event the LOTT Wastewater Alliance is in default of its obligations under this Agreement.

**ARTICLE V**  
**LOTT WASTEWATER ALLIANCE: COOPERATION IN**  
**MANAGEMENT & DEVELOPMENT OF WASTEWATER FACILITIES**

**Section 5.1 RESPONSIBILITY FOR JOINT FACILITIES AND LOCAL SYSTEMS**

**a) Joint Facilities.** The LOTT Wastewater Alliance shall plan, construct, acquire, replace, operate, and maintain all Joint Facilities such that the entire LOTT System and the Joint Facilities are built, operated and maintained as an integrated sewerage system in accordance with high engineering standards and in conformity with the sewer standards of American Public Works Association, the Water Environment Federation and requirements of the state, federal and local agencies having jurisdiction over the same. The LOTT Wastewater Alliance shall in its sole discretion determine the name, location, and time of construction of LOTT Wastewater Alliance Joint Facilities. The LOTT Wastewater Alliance shall maintain through responsible insurers including insurance pools public liability insurance for Joint Facilities operations and responsibilities in accordance with industry standards.

**b) Local Systems.** The Partners shall maintain and operate their respective Local Systems in accordance with high engineering standards and in conformity with the standards established by the state and federal agencies having jurisdiction over the same. Modifications and additions to Local Systems shall be constructed and operated in accordance with the sewer standards of American Public Works Association, the Water Environment Federation and requirements of the state and federal agencies having jurisdiction over the same. The Partners shall secure and maintain with responsible insurers including insurance pools all such insurance as is customarily maintained with respect to sewage systems of like character against loss of or damage to the Local Systems against public and other liability to the extent that such insurance can be secured and maintained at reasonable cost.

**c) Liability.** Any liability incurred by the LOTT Wastewater Alliance as a result of the operation of the LOTT System shall be the sole liability of the LOTT Wastewater Alliance and any liability incurred by a Partner as a result of the operation of its Local System shall be the sole liability of that Partner.

**Section 5.2 JOINT FACILITIES OPERATIONS**

As provided in Section 11.3, LOTT and Olympia shall enter into an O&M Contract to provide for Olympia to continue to operate the Joint Facilities for an initial period of time. Prior to giving notice of termination of the O&M Contract, the LOTT Board shall prepare a study of Olympia's and alternative operating costs and practices. After completion of the study, the LOTT Board shall determine whether to continue under the O&M Contract, to terminate the O&M Contract and make other arrangements for facilities operations, or take such other action as the Board finds necessary and appropriate. If termination of the O&M Contract with Olympia occurs, the LOTT Board will provide for an orderly, smooth transition which fairly takes into account the effect on Olympia employees. The Partners shall work together in good faith and cooperate with the LOTT Wastewater Alliance in preparation of the study and in developing new

arrangements, if any, for facilities operations to succeed the O&M Contract. After the O&M Contract terminates, the LOTT Wastewater Alliance may, in its sole discretion, decide to operate and maintain the Joint Facilities through its own staff or through a contract or contracts with others, including any of the Partners.

### **Section 5.3 RELATIONSHIP TO LOCAL PLANNING**

**a) Land use.** The development of LOTT Wastewater Alliance Joint Facilities shall be consistent with the Plan, with applicable laws, regulations and permits, and with the Partners' zoning and land use requirements. The LOTT Wastewater Alliance does not have any land use or police powers as a non-profit corporation even though it exists for the benefit of its governmental Partners and their citizens. LOTT shall follow applicable Partner zoning and land use requirements to secure conditional use and other permits and approvals necessary for the development of new LOTT Wastewater Alliance Joint Facilities or modification of Existing Joint Facilities.

**b) Partner and GMA sewerage plans.** The Plan shall be consistent with and responsive to land use plans adopted both individually and collectively by the Partners at the time this Agreement is adopted and whenever the Plan is amended. Future land use plans or modifications proposed individually or collectively by the Partners that affect wastewater treatment shall be offered to the LOTT Board for review and comment regarding their relationship to current LOTT plans prior to their adoption. Further, the Plan shall be consistent with the general sewer plans of the Cities of Lacey, Olympia and Tumwater and the sewerage general plan of Thurston County in force at the time this Agreement is adopted. Before adopting any new or modified general sewer plan or sewerage general plan, each Partner shall forward any such plan proposal to the LOTT Board for review and comment.

### **Section 5.4 PARTNER COMMITMENTS TO ASSIST LOTT**

To the extent legally feasible, each Partner agrees to give good faith consideration to LOTT requests for necessary zoning, land use, eminent domain proceedings and other permits and approvals to implement the Plan. In the event that a Partner completes an eminent domain proceeding for the benefit of the LOTT Wastewater Alliance to secure property or property rights for Joint Facilities, the LOTT Wastewater Alliance shall compensate the Partner for its expenses and for just compensation paid for such property and property rights.

## **ARTICLE VI STATE ENVIRONMENTAL POLICY ACT**

### **Section 6.1 COORDINATION OF ENVIRONMENTAL REVIEW & SEPA REQUIREMENTS**

The Partners and the LOTT Wastewater Alliance are obligated to identify and consider environmental impacts, alternatives and mitigation measures in the development of plans, programs and facilities relating to wastewater management. The State Environmental Policy Act, Ch. 43.21C RCW, and the regulations and ordinances promulgated under it (“SEPA”), establishes procedures for preparing environmental documents and obtaining input from citizens and agencies, and requires identification of a lead agency to prepare the environmental documents and administer the environmental review process. SEPA also requires agencies to integrate environmental review at the earliest time in the decision making process to ensure that planning and decisions reflect environmental values. The Partners agree that it is generally in the public interest for the LOTT Wastewater Alliance to directly manage environmental review of LOTT proposals and actions to assure the early consideration of environmental factors.

For purposes of this Article VI, “action” has the meaning given it in WAC 197-11-704, and “proposal” has the meaning provided in WAC 197-11-784.

### **Section 6.2 SEPA COMPLIANCE**

**a) LOTT as an Agency under SEPA.** The LOTT Wastewater Alliance shall fulfill the responsibilities of an agency pursuant to SEPA in connection with all proposals and actions which it undertakes. By carrying out the responsibilities of an agency under SEPA, the LOTT Wastewater Alliance shall satisfy any SEPA obligations that apply directly to the LOTT Wastewater Alliance as well as any that may apply to indirectly due to the Alliance’s acting on the Partners’ behalf.

**b) Procedural Responsibilities as Lead Agency.** With respect to LOTT proposals and actions, the LOTT Wastewater Alliance shall carry out the Partners’ lead agency procedural responsibilities under SEPA, including the procedural functions of a “lead agency” under SEPA, WAC 197-11-758; however, the Partners retain their legal authority to assert lead agency status for projects located within their respective jurisdictions as permitted under SEPA, including, for example, by WAC 197-11-340(2)(e) and 197-11-948. This includes, without limitation, authority to adopt agency SEPA rules, to establish an administrative appeals process, to enter into lead agency agreements pursuant to WAC 197-11-944, and to appoint a “responsible official.”

### **Section 6.3 RETENTION OF SUBSTANTIVE AUTHORITY**

The LOTT Wastewater Alliance’s authority under this Article VI is to implement the procedural requirements of SEPA for LOTT proposals and actions. The Partners retain their respective substantive authorities to condition or deny such proposals and actions in their respective jurisdictions as part of their zoning, land use, SEPA, or other permitting processes.

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## **ARTICLE VII PRETREATMENT**

### **Section 7.1 Pretreatment Program**

Pursuant to this Agreement, the LOTT Wastewater Alliance will own and operate the LOTT System, and will hold permits required to operate the LOTT System, including the NPDES waste discharge permit for the LOTT Treatment Plant.

Various facilities located within the Partners' respective jurisdictions currently contribute wastewater which includes commercial and industrial waste to the LOTT System. Such facilities are referred to in this Article as "Industrial Users."

The LOTT Wastewater Alliance must implement and enforce a pretreatment program to control discharges from all Industrial Users of the LOTT System pursuant to requirements set out in 40 CFR Part 403, Ch. 173-208 WAC, and the NPDES Permit. In this Article, the Partners agree to adopt and maintain sewer use ordinances that subject Industrial Users within their respective boundaries to the necessary pretreatment controls, and to implement and enforce such sewer use ordinances.

The Partners stipulate their willingness and ability to assume enforcement powers of the Washington State Department of Ecology, and shall adopt, maintain, and actually enforce the LOTT Discharge and Industrial Pretreatment Regulations (the "LOTT Regulations") as contained in Exhibit "G" of this Agreement, and as the LOTT Regulations may be amended from time to time by the LOTT Board. No Partner shall retain or adopt any ordinance provisions conflicting with or superseding the LOTT Regulations.

The LOTT Wastewater Alliance shall conduct an annual review of the LOTT Regulations and prepare any revisions necessary to provide adequate protection of the LOTT System and maintain compliance with Federal General Pretreatment Regulations and applicable state regulations. Any proposed revisions shall be submitted to the LOTT Board for approval. The LOTT Regulations shall not be modified or amended except by unanimous agreement of the LOTT Board. The Partners agree to immediately consider for adoption any revisions to the LOTT Regulations approved by the LOTT Board. The Partners agree to consider and act upon such revisions within ninety (90) days of approval by the LOTT Board.

### **Section 7.2 Pretreatment Charges and Permits**

Where the LOTT Regulations call for the development of permits, permit fees, charges for discharge violations, and/or enforcement actions, the Partners agree to establish these permits, fees, charges and actions through their annual review of the LOTT operating budget based on predicted costs developed using information provided by the LOTT Wastewater Alliance. Such permit fees, charges and actions shall become effective upon unanimous approval by the LOTT Board. Permits for Industrial Users shall be issued by the Partners. Partners shall provide the LOTT Wastewater Alliance with fourteen (14) days' written notice

before issuing permits so that LOTT Wastewater Alliance personnel can review and comment on the proposed terms and conditions of such permits.

### **Section 7.3 Inspections; Imminent Danger**

The Partners agree that LOTT Wastewater Alliance personnel, or the LOTT Wastewater Alliance's agents, shall coordinate with the appropriate Partner jurisdiction personnel to conduct activities within each Partner's jurisdiction to collect information on compliance with the LOTT Regulation, Federal General Pretreatment Regulation, and state requirements. These activities shall include, among others, coordination with the Department of Ecology Pretreatment Program, updating the industrial waste survey, developing industrial discharge permits and compliance schedules, conducting compliance monitoring and inspections, reviewing industrial self monitoring reports, and notifying the Partners of instances of non-compliance. In order to accomplish these requirements the Partners agree that:

a) Agents of the LOTT Wastewater Alliance may, following reasonable notice to the Partner, enter and inspect at any reasonable time any part of the Local System of any Partner, and any records pertaining to the Partner's pretreatment program.

b) To the extent allowed by law, duly authorized agents of the LOTT Wastewater Alliance, in coordination with Partner personnel, shall be permitted to enter onto private property to inspect Industrial Users. Upon the request of the LOTT Wastewater Alliance, the Partners shall promptly make all necessary legal and administrative arrangements for these inspections.

c) Where a discharge to the wastewater treatment system reasonably appears to present an imminent danger to the health and welfare of persons, or an imminent danger to the environment, or threatens to interfere with the operation of the wastewater treatment system, the LOTT Wastewater Alliance may, in cooperation with a Partner, immediately initiate steps to identify the source of the discharge and to halt or prevent the discharge.

### **Section 7.4 Enforcement**

Whenever provided notice that a discharger has failed or has refused to fulfill any requirements of either the LOTT Regulations, an Industrial Discharge Permit, or a Compliance Schedule, the Partner with jurisdiction over the discharger shall use its legal authority to enforce the applicable regulations. Such enforcement may include collection of permit fees and industrial surcharges, application of fines and/or civil penalties, seeking injunctive relief, and /or interruption of sewer services.

Should a dispute arise between any Partner and personnel or agents of the LOTT Wastewater Alliance regarding any application of the LOTT Regulations, the issue shall be submitted to the LOTT Board. The determination of a majority of the LOTT Board shall be given in writing and the recommended action shall be followed by all Partners.

## **Section 7.5    Accountability**

A majority of the LOTT Board may penalize any single Partner for failure to apply and enforce the LOTT Regulations. This penalty may include requiring that the total of all fines, fees and other charges which are due and payable be paid by the offending Partner to LOTT for each day the Partner fails to apply and enforce the regulations. The offending Partner shall indemnify and hold harmless the LOTT Wastewater Alliance against any damages, penalties or other losses incurred as a result of the Partner's failure to enforce the LOTT Regulations. Without limitation, the LOTT Wastewater Alliance may obtain the remedy of specific performance from a court of competent jurisdiction to require the offending Partner to enforce the LOTT Regulations.

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## **ARTICLE VIII**

### **FLOW REDUCTION & PREVENTION OF CAPACITY DEGRADATION**

#### **Section 8.1 PRIOR AGREEMENTS RELATING TO INFLOW AND INFILTRATION AND JOINT FLOW REDUCTION PROJECTS.**

The Intergovernmental Contract for Inflow and Infiltration Management and New Capacity Planning, dated March 27, 1995 (see Exhibit J) and the Interlocal Cooperation Agreement Between Thurston County and the Cities of Lacey, Olympia, and Tumwater Regarding Joint Wastewater Flow Reduction and Water Conservation Projects (with attachments), dated May 28, 1997 (see Exhibit K) shall continue in force according to their terms, subject to amendment, modification, or termination by the Partners. With approval of this Agreement the “December 31, 1999” dates in the second paragraph of Section 4 (c) of the Intergovernmental Contract for Inflow and Infiltration Management and New Capacity Planning, dated March 27, 1995 (Exhibit J) are amended to “December 31, 2001.” This amendment is reflected in Exhibit J.

#### **Section 8.2 Commitment to Support Volume Based Billing by the Partners**

As early as practical, but in no event later than one year after Consolidation, the LOTT Board will develop economic incentives that assist individual Partners choosing to implement residential sewer rates based in some degree on wastewater discharge volumes and designed to encourage lower residential wastewater discharge.

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**ARTICLE IX**  
**[ RESERVED ]**

[Reserved for additional subject]

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## **ARTICLE X LEGAL RELATIONS**

### **Section 10.1 EFFECTIVE DATE & TERM OF AGREEMENT**

**a) Effective date.** This Agreement shall become effective on the first date when all of the following events have occurred: i) the Agreement has been duly executed by all of the Partners; ii) the Agreement has been filed with the Thurston County Auditor pursuant to RCW 39.34.040; and iii) the Agreement has been approved pursuant to RCW 39.34.050.

**b) Duration.** Commencing on the effective date specified above, this Agreement shall be for a term of 35 years or such longer period as any LOTT Debt is outstanding or the payment thereof is not fully provided for, secured and funded.

### **Section 10.2 WITHDRAWAL BY A PARTNER**

Any Partner may individually withdraw from the obligations of this Agreement with the consent of all of the other Partners, which consent shall not be unreasonably withheld, after all LOTT Debt is retired or payment thereof is fully provided for, secured and funded, and the remaining Partners shall continue to be bound by this Agreement as it may be amended.

### **Section 10.3 AMENDMENT OF AGREEMENT AND ORGANIZATION**

This Agreement may be amended with the approval of the legislative bodies of the Partners. The LOTT Wastewater Alliance may be converted into a separate municipal corporation if and as permitted by law. Upon the creation of such a separate municipal corporation, all LOTT Wastewater Alliance rights and obligations under this Agreement shall transfer to that new municipal corporation.

### **Section 10.4 NOTICE**

Notices required to be given to Partners shall be deemed given when served on the respective City Clerks and the Clerk of the Board of County Commissioners of the County. When members of the LOTT Board must be notified, notice to one member thereof from each Partner shall be sufficient compliance, but reasonable efforts shall be made to give notice to every member.

### **Section 10.5 RELATIONSHIP TO 1976 INTERGOVERNMENTAL CONTRACT**

As detailed in Article XI, the 1976 Intergovernmental Contract remains in force until Consolidation. Upon Consolidation, the 1976 Intergovernmental Contract as described in Exhibit A terminates in its entirety.

## **Section 10.6 RESOLUTION OF LEGAL DISPUTES**

**a)** To effect a quick and efficient resolution of legal disputes that may arise under this Agreement, the Partners establish the following procedure. All claims or disputes concerning the interpretation or application of this Agreement or breach thereof (“Dispute”) shall be decided exclusively by the following dispute resolution procedure unless all Partners agree in writing otherwise. This dispute resolution procedure applies only to disputes of a legal nature, and shall not be construed to apply to legislative or policy matters that are within the discretion or authority of the LOTT Board or the Partners.

**b)** Each Partner shall use its best efforts to resolve issues prior to giving Notice of Dispute and invoking the procedures set forth in this Section. In the event that any Partner is not satisfied with the results of the resolution, that Partner, acting through its representative on the LOTT Board, shall give prompt written notice of any Dispute to the other Partners’ representatives on the LOTT Board, with a copy to the LOTT administrator or executive director. This notice, herein referred to as a “Notice of Dispute,” shall clearly state the subject matter of the unresolved issues and the relief requested.

**c) Level I.** Within ten (10) working days of receipt of a Notice of Dispute, each Partner’s representative on the LOTT Board shall designate a representative and the designated representatives shall meet and confer and attempt to resolve the Dispute for a period not to exceed five (5) working days. If the Dispute is not resolved at the close of the Level I meeting, the designated representatives shall prepare before adjournment of the meeting a written memorandum summarizing the matters that remain at issue.

**d) Level II.** If the Dispute is not resolved within 48 hours of the close of the Level I meeting, each designated representative shall meet with that Partner’s representative on the LOTT Board to discuss the Dispute and the memorandum. Within ten (10) working days of the close of the Level I meeting, the designated representatives of the Partners shall meet and confer and attempt to resolve the Dispute for an additional period not to exceed five (5) working days. Attendance by LOTT Board members at the Level II meeting is optional. If the Partners are not able to resolve the Dispute in the Level II meeting, the designated representatives shall discuss the use of mediation, arbitration, or other alternative dispute resolution process before concluding the Level II meeting.

**e)** The terms of the resolution of all Disputes concluded in Level I or II meetings shall be memorialized in writing and signed by each Partner’s representative on the LOTT Board.

**f)** If the Dispute is not resolved within 48 hours of the close of the Level II meeting, then a) the Partners may mediate the issue; b) the Partners may submit the dispute to the Superior Court of Thurston County for arbitration proceedings provided by Chapter 7.04 RCW; or c) any Partner may commence a civil action to resolve the Dispute, unless the Parties agree otherwise in writing. The Superior Court of Thurston County shall be the exclusive venue for the filing of any action, and this Agreement shall be governed by Washington law. Any mediation or arbitration shall be limited to the interpretation and application of this Agreement and may not

impair the contract and debt obligations of LOTT or the powers of LOTT to fix the budget for and determine the methods used in the management of the Joint Facilities.

### **Section 10.7 PARTNER OBLIGATION PENDING RESOLUTION OF DISPUTES**

The initiation or existence of a dispute between the Partners or between one or more Partners and the LOTT Wastewater Alliance arising out of or relating to this Agreement shall not relieve or authorize the deferral of the Partners' duty to make payments to the LOTT Wastewater Alliance as provided herein.

### **Section 10.8 SURVIVAL OF OBLIGATIONS**

The Partners' obligations under Section 11.2(b) of this Agreement shall survive the expiration or earlier termination of this Agreement.

### **Section 10.9 INTERPRETATION OF AGREEMENT**

**a) Governing law.** This Agreement shall be governed by the laws of the State of Washington. The exclusive jurisdiction and venue for any lawsuit between the Partners arising out of this Agreement shall be in Thurston County Superior Court.

**b) Assignment.** This Agreement shall be binding on each Partner and the successors to them and may not be assigned in any respect without the consent of all Partners.

**c) Third party beneficiaries.** The Partners expressly do not intend to create any right, obligation or liability, or promise any performance, to any third party. The Partners have not created any right for any third party to enforce this Agreement.

**d) Severability.** It is the belief of the Partners that all provisions of this Agreement are lawful. If any covenant or provision of this 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 this Agreement. In such event, the Partners shall enter into immediate negotiations for the purpose of arriving at a mutually satisfactory replacement of such covenant or provision.

**e) Entire Agreement.** This Agreement embodies the Partners' entire agreement on the issues covered by it, except as supplemented by subsequent written agreements that the Parties make. All prior negotiations and draft written agreements are merged into and superseded by this Agreement.

**f) Counterparts.** This Agreement may be executed in counterparts, each of which shall be considered for all purposes as an original.

**Section 10.10 WAIVER**

No waiver by any party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or a different provision of this Agreement.

**Section 10.11 REMEDIES**

In addition to the remedies provided by law, this Agreement shall be specifically enforceable by any party.

## **ARTICLE XI COOPERATION THROUGH CONSOLIDATION PERIOD**

### **Section 11.1 COORDINATION: LOTT BOARD & TAC**

**a) Parallel oversight.** This Agreement is intended to facilitate the operation of the LOTT System, including the integration of the Existing Joint Facilities and new LOTT Wastewater Alliance Joint Facilities, under the management of the LOTT Wastewater Alliance Board of Directors. During the period from the effective date of the Agreement until the date of Consolidation, the LOTT System shall be administered by two parallel organizations composed of members appointed by the Partners who will concurrently serve as TAC members under the 1976 Intergovernmental Contract and as the Board of Directors of the LOTT Wastewater Alliance. The same Partner representatives will serve as TAC members and as LOTT Board members. Therefore, the Partner representatives may be called upon to act as TAC, in their role under the 1976 Intergovernmental Contract, or as the LOTT Board, in their role under this Agreement, or in a joint capacity, as circumstances may determine.

**b) Extraordinary cooperative efforts.** The Partners recognize that, during at least the initial twelve months after the effective date of this Agreement, extraordinary cooperative efforts will be required to coordinate the legal and service obligations of the LOTT System and to complete all of the legal and administrative steps necessary to consolidate the TAC and LOTT Wastewater Alliance operations.

**i)** The TAC and the LOTT Board shall coordinate the LOTT functions under the two legal instruments so that the ratepayers are not disadvantaged by the use of concurrent agreements.

**ii)** The Partners shall cooperate as may be necessary to enable the LOTT Board to operate as a legal and independent entity.

**iii)** During the initial twelve month period under this Agreement, the LOTT Board shall make quarterly reports to the Partners' legislative bodies on the progress made on implementing an independent LOTT entity and any steps taken to assume legal obligations and achieve Consolidation.

### **Section 11.2 TRANSFER AND RELEASE**

**a) Transfer of Existing Joint Facilities.** Each Partner agrees to transfer all right, title, and interest in and to the Existing Joint Facilities to the LOTT Wastewater Alliance. Each Partner further agrees to execute or approve any and all deeds, leases, instruments, documents and resolutions or ordinances necessary to give effect to the terms of this Agreement.

**b) Release of Claims.** Each Partner hereby releases and agrees to hold each other Partner harmless from any and all claims, demands, and causes of action arising from or relating to the legal or equitable ownership of Existing Joint Facilities prior to effective date of this

Agreement, including the extent or nature of such ownership and related claims to reimbursement or compensation, except as provided in the Agreement Regarding Additional LOTT Joint Facilities of June 21, 1999 (see Exhibit I) concerning City of Lacey facilities.

### **Section 11.3 O & M CONTRACT WITH OLYMPIA.**

To provide for an orderly transition of facilities operations, the LOTT Wastewater Alliance and Olympia shall enter into an O&M Contract generally in the form set out in Exhibit H. This contract does not include administrative staff reporting directly to the LOTT Board. The term of the O&M Contract shall commence on the date of Consolidation and terminate one year after the LOTT Board provides notice of termination to Olympia, which notice shall not be given earlier than December 31, 1999. This Section shall not preclude other contracts with Olympia at the LOTT Board's discretion.

### **Section 11.4 ADMINISTRATIVE AND TREASURY SERVICES CONTRACT WITH OLYMPIA.**

To provide for an orderly transition of administrative and treasury services, the LOTT Wastewater Alliance and Olympia shall enter into an Administrative and Treasury Services Contract generally in the form set out in Exhibit L. The term of the Administrative and Treasury Services Contract shall commence on the date of Consolidation and terminate one year after the LOTT Board provides notice of termination to Olympia, which notice shall not be given earlier than December 31, 1999. This Section shall not preclude other contracts with Olympia at the LOTT Board's discretion.

### **Section 11.5 CONSOLIDATION PRINCIPLES AND OBJECTIVES**

The Partners shall use their best efforts and work together in good faith to achieve Consolidation by meeting the following objectives:

**a) LOTT Wastewater Alliance.** The LOTT Wastewater Alliance shall have been formed, obtained Section 501(c)(3) status from the Internal Revenue Service, and demonstrated its capability of carrying out its responsibilities under this Agreement.

**b) Olympia Bonds.** All of the Bonds shall have been paid or defeased under a financing arrangement where LOTT funds pay for all transaction costs, 88 percent of which shall be paid using Capacity Development Charge receipts and 12 percent using Wastewater Service Charge receipts. In addition, the State of Washington loan to LOTT, evidenced by the Olympia Water and Sewer Revenue Bonds (1992) ultimately issued in a principal amount of \$36,579,836.19, shall be assumed, assigned or otherwise transferred from Olympia to the LOTT Wastewater Alliance. The LOTT Wastewater Alliance shall pay the bonds and meet all covenants set forth in Olympia ordinances authorizing the bonds.

**c) Rates.** The Partners shall have approved and imposed the rates and charges specified in Article III of this Agreement, and the proceeds are under the control of and available for use by the LOTT Wastewater Alliance.

**d) Transfer of Existing Joint Facilities.** All of the Existing Joint Facilities, as identified in Exhibit B, shall have been transferred to the LOTT Wastewater Alliance by an appropriate instrument or legislative action, or such transfers shall have been substantially provided for to the satisfaction of the LOTT Board.

**e) O&M Contract.** The LOTT Wastewater Alliance and Olympia shall have entered the O&M Contract to take effect upon Consolidation.

**f) Administrative and Treasury Services Contract.** The LOTT Wastewater Alliance and Olympia shall have entered the Administrative and Treasury Services Contract to take effect upon Consolidation.

**g) Vendor contracts.** Olympia shall have assigned to the LOTT Wastewater Alliance all consulting, service, supply, utility and other similar contracts relating to Existing Joint Facilities or the LOTT System, unless such assignment is not legally feasible or would represent any significant additional costs or risk to Olympia or unless the O&M Contract provides for Olympia to continue to administer or to enter such contracts relating to Joint Facilities. If contracts held by Olympia for the benefit of LOTT cannot be so assigned or terminated and then assumed by the LOTT Wastewater Alliance without cost or risk to Olympia, then such contracts shall be allowed to expire at the end of their normal term and the LOTT Wastewater Alliance shall secure such services, supplies, materials or construction in the future under separate agreements.

**h) Permits.** Olympia and the other Partners have assigned or transferred the LOTT Wastewater Alliance NPDES permits and all other permits, certificates, and licenses necessary or useful in ownership, operation, or control of the LOTT System or Existing Joint Facilities.

**i) Other necessary steps.** As determined by the LOTT Board, the Partners shall take such other steps and actions as are necessary and appropriate to concentrate ownership and control of Existing Joint Facilities and the LOTT System in the LOTT Wastewater Alliance and to enable the LOTT Wastewater Alliance to function as a comprehensive wastewater treatment and management entity.

## **Section 11.6 CONSOLIDATION EVENT**

**a) LOTT Board finding.** When it determines that the Consolidation objectives set out in Section 11.5 have been substantially achieved, the LOTT Board shall adopt a resolution that finds and declares that Consolidation has been achieved. The Partners acknowledge that the LOTT Board may make a finding of Consolidation that reflects substantial attainment of the objectives.

**b) Effect on 1976 Intergovernmental Contract and TAC.** Upon the LOTT Board's adoption of the Consolidation resolution pursuant to paragraph (a) of this section, the following events shall be deemed to occur:

- i) 1976 Intergovernmental Contract shall terminate as provided in Section 10.5;
- ii) TAC shall be dissolved;
- iii) The O & M Contract shall enter into force; and
- iv) The Administrative and Treasury Services Contract shall enter into force.

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

**CITY OF OLYMPIA**

**CITY OF LACEY**

By \_\_\_\_\_

By \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: By \_\_\_\_\_

Attest: By \_\_\_\_\_

**CITY OF TUMWATER**

**THURSTON COUNTY**

By \_\_\_\_\_

By \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: By \_\_\_\_\_

Attest: \_\_\_\_\_

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## **Exhibit A**

### **1976 INTERGOVERNMENTAL AGREEMENT, AS AMENDED TABLE OF CONTENTS**

|  |                    |
|--|--------------------|
| Intergovernmental Contract for Financial Assistance with Emergency Sewer Repairs   | April 29, 1996     |
| Intergovernmental Agreement for Purchase and Sale of Animal Shelter Facilities   | February 26, 1996  |
| Intergovernmental Contract for LOTT Environmental Review   | August 23, 1994    |
| Intergovernmental Agreement for Industrial Waste Pretreatment Program  | April 26, 1993     |
| Amendment to Intergovernmental Contract for Wastewater Facilities Management; Reserve Capacity Charge                              | January 11, 1993   |
| Amendment to Intergovernmental Contract for Wastewater Facilities Management; Low Income Assistance Rates                          | July 20, 1992      |
| Amendment to Intergovernmental Contract For Wastewater Facilities Management; Multi-Family Units, ERUs                             | October 15, 1991   |
| Intergovernmental Contract: Uses of the Reserve Capacity Charge, Joint Facilities, Inflow and Infiltration and Equalization Basins | September 16, 1991 |
| Intergovernmental Contract: Amending 1976 Agreement and Initiating Nitrogen Removal Plant Improvements                             | January 9, 1989    |
| Amendment to Intergovernmental Agreement for Wastewater Facilities Management (LOTT Phase II Study)                                | September 7, 1982  |
| Intergovernmental Contract for Wastewater Facilities Management  | November 30, 1976  |

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## **Exhibit B**

### **EXISTING JOINT FACILITIES**

Existing Joint Facilities are comprised of the following facilities:

- 1) All facilities designated as Joint Facilities in the 1976 Intergovernmental Contract.
- 2) Modifications to the LOTT Wastewater Treatment Plant and outfalls.
- 3) The 1990 and 1998 modifications to Joint Facilities in the vicinity of Henderson Blvd./Plum. Street and Union Avenue
- 4) Modifications to Joint Facilities in Martin Way.
- 5) Planned modifications to the Capitol Lake Pump Station and force main.
- 6) Lacey's interceptor extending north and east from the LOTT joint facilities at Martin Way and Sleater-Kinney Road to the intersection of Martin Way and Marvin Road including Lacey's Martin Village Pump Station.
- 7) Planned Southern Connection south from the Capitol Lake Pump Station to a point on the eastern boundary of Tumwater Falls Park on Capitol Boulevard south of the bridge across the Deschutes River.

All Existing Joint Facilities include any and all easements, rights of way, permits and approvals, licenses, franchises, and other property interests necessary or useful in the ownership or operation of the specific facility.

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**Exhibit C**  
**ARTICLES OF INCORPORATION**  
**of the**  
**LOTT WASTEWATER ALLIANCE**

The undersigned, to form a nonprofit corporation under the provisions of the Washington Nonprofit Corporation Act (Chapter 24.03 of the Revised Code of Washington), as amended, hereby submit the following Articles of Incorporation.

**Article 1. NAME**

The name of the corporation shall be the LOTT Wastewater Alliance (the “Corporation”).

**Article 2. DURATION**

The Corporation shall have perpetual existence.

**Article 3. PURPOSES AND POWERS**

**Section 3.1. Purposes.**

This Corporation is organized exclusively for one or more of the purposes specified in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. The Corporation shall exist for the primary purpose of lessening the burdens of the various municipal governments that require wastewater or other governmental services in the area to be served by the Corporation. The Corporation was created pursuant to that certain Interlocal Cooperation Act Agreement for Wastewater Facilities Management by LOTT Alliance by and between the City of Olympia, Washington (“Olympia”); the City of Lacey, Washington (“Lacey”); the City of Tumwater, Washington (“Tumwater”); and Thurston County, Washington (the “County”), dated \_\_\_\_\_, \_\_\_\_\_ (“Agreement”). By way of illustration, and not by way of limitation, the Corporation intends to lessen the burdens of government by implementing a wastewater resource management plan, which anticipates the development of additional wastewater treatment capacity, and operating and maintaining all or part of the wastewater facilities.

In furtherance of such purposes, this Corporation shall have the following additional purposes and powers:

- (a) implement and otherwise effectuate the Agreement;
- (b) administer property, including without limitation, selling, leasing, exchanging or otherwise distributing real and personal property;
- (c) contract for services and work and enter into other legal instruments binding the Corporation or provide for benefits to be secured by the Corporation;

- (d) aid, support, and assist by contributions or otherwise, other organizations organized and operated exclusively for purposes specified in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; and
- (e) engage in any and all lawful activities which may be necessary, useful or desirable for the furtherance, accomplishment, fostering or attainment of the foregoing purposes, either directly or indirectly and either alone or in conjunction or cooperation with others, whether such others be persons or organizations of any kind or nature, such as corporations, firms, associations, trusts, institutions, foundations, or governmental bureaus, departments, or agencies.

### **Section 3.2. Powers.**

In general, and subject to such limitations and conditions as are or may be prescribed by law, these Articles of Incorporation or the Corporation's Bylaws, the Corporation shall have all powers which now or hereafter are conferred by law upon a corporation organized for the purposes set forth above, are necessary or incidental to the powers so conferred, or are conducive to the attainment of the Corporation's purposes.

## **Article 4. LIMITATIONS**

All of the purposes and powers of the Corporation shall be exercised exclusively for charitable purposes in such manner that the Corporation shall qualify as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States Internal Revenue law, and that contributions to the Corporation shall be deductible under Section 170(c)(2) of the Internal Revenue Code of 1986, or the corresponding provision of any future United States Internal Revenue law.

No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, except as otherwise permitted by an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, or the corresponding provision of any future United States Internal Revenue law. The Corporation shall not participate in, nor intervene in any political campaign, including the publishing or distribution of statements, on behalf of or in opposition to any candidate for public office.

Notwithstanding any other provisions of these Articles, the Corporation shall not carry on any activities not permitted to be carried on (a) by a corporation exempt from federal and state income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States Internal Revenue law, or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986, or the corresponding provision of any future United States Internal Revenue law.

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its members (if any), directors, trustees, officers, or other private persons, except

that the Corporation is authorized or empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its purposes.

### **Article 5. DISSOLUTION**

Upon the winding up and dissolution of the Corporation, the assets of the Corporation remaining after payment, or provision for payment, of all debts and liabilities of the Corporation, shall be distributed in trust to either a governmental entity or municipal corporation in such a manner as to best accomplish the goals of the Corporation as provided in a plan of final liquidation and dissolution as may be approved by the Corporation's Board of Directors. If, however, (i) such distribution would not be in compliance with Section 501(c)(3) of the Internal Revenue Code of 1986; (ii) no such governmental entity or municipal corporation is willing or able to accept the distribution; or (iii) if such distribution is not otherwise possible, then the distribution shall be made to an organization or organizations recognized as exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, or the corresponding provision of any future United States Internal Revenue law (to be used exclusively to accomplish the purposes for which this Corporation is organized) as may be provided in a plan of final liquidation and dissolution approved by the Corporation's Board of Directors.

### **Article 6. MEMBERS**

The qualifications of members, the property, voting and other rights, privileges, and responsibilities of members shall be set forth in the Bylaws.

### **Article 7. DIRECTORS**

The management of the Corporation shall be vested in a Board of Directors pursuant to the Washington Nonprofit Corporation Act, these Articles of Incorporation and the Corporation's Bylaws. The Board shall consist of directors and alternate directors. The powers, duties, number, qualifications, terms of office, manner of election, time and criteria for removal, and time and place of meetings of the directors and alternate directors shall be as set forth in the Bylaws of the Corporation.

The names and addresses of the persons who are to serve as the initial directors of the Corporation are as follows:

| Name  | Address |
|-------|---------|
| _____ | _____   |

The names and addresses of the persons who are to serve as the initial alternate directors of the Corporation are as follows:

| Name (Alternate For) | Address |
|----------------------|---------|
|----------------------|---------|

---

For purposes of these Articles of Incorporation, and unless the context otherwise clearly indicates, the term “director” shall include both directors and alternate directors.

### **Article 8. DIRECTOR LIABILITY LIMITATIONS**

A director shall have no liability to the Corporation for monetary damages for conduct as a director, except for acts or omissions that involve intentional misconduct by the director, or for any transaction from which the director will personally receive a benefit in money, property or services to which the director is not legally entitled. If the Washington Nonprofit Corporation Act is hereafter amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director shall be eliminated or limited to the full extent permitted by the Washington Nonprofit Corporation Act, as so amended without need for further amendment of these Articles by the Corporation’s Board of Directors. Any repeal or modification of this Article shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification for or with respect to an act or omission of such director occurring prior to such repeal or modification.

Directors of the Corporation shall not be personally liable to the Corporation or its members, if any, for monetary damages for conduct as a director, except for acts or omissions that involve intentional misconduct by a director or a knowing violation of law by a director, where the director votes or assents to a distribution which is unlawful or violates the requirements of these Articles of Incorporation, or for any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled.

### **Article 9. INDEMNIFICATION**

#### **Section 9.1. Right to Indemnification.**

Each person who was, or is threatened to be made a party to or is otherwise involved (including, without limitation, as a witness) in any actual or threatened action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer, he or she is or was serving at the request of the Corporation as a director, director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans (whether the basis of such proceeding is an alleged action

in an official capacity as a director, trustee, officer, employee or agent or in any other capacity while serving as a director, trustee, officer, employee or agent), shall be indemnified and held harmless by the Corporation, to the full extent permitted by applicable law as then in effect, against all expense, liability and loss (including attorney's fees, judgments, fines, ERISA excise taxes or penalties and amounts to be paid in settlement) actually and reasonably incurred or suffered by such person in connection therewith, and such indemnification shall continue as to a person who has ceased to be a director, trustee, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; however, except as provided in Section 9.2 with respect to proceedings seeking solely to enforce rights to indemnification, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Section 9.1 shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition; however, the payment of such expenses in advance of the final disposition of a proceeding shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Section 9.1 or otherwise.

### **Section 9.2. Right of Claimant to Bring Suit.**

If a claim for which indemnification is required under Section 9.1 is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, except in the case of a claim for expenses incurred in defending a proceeding in advance of its final disposition, in which case the applicable period shall be twenty (20) days, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, to the extent successful in whole or in part, the claimant shall also be entitled to be paid the expense of prosecuting such claim. The claimant shall be presumed to be entitled to indemnification under this Article upon submission of a written claim (and, in an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition, where the required undertaking has been tendered to the Corporation), and thereafter the Corporation shall have the burden of proof to overcome the presumption that the claimant is not so entitled. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or its members, if any) to have made a determination prior to the commencement of such action that indemnification, or the reimbursement or advancement of expenses of the claimant is proper in the circumstances, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or its members, if any) that the claimant is not entitled to indemnification or the reimbursement or advancement of expenses, shall be a defense to the action or create a presumption that the claimant is not so entitled.

### **Section 9.3. Nonexclusivity of Right.**

The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Article shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of

these Articles of Incorporation, Bylaws, agreement, vote of members, if any, or disinterested directors or otherwise.

#### **Section 9.4. Indemnification of Members.**

The Corporation shall hold Corporation members harmless and defend all claims for personal injury or property damage arising out of the Corporation's activities in the same manner as provided for directors and officers under Sections 9.1, 9.2, and 9.3, and only to the extent that such claims, damages, and injuries are not caused by the negligent act or omission of a member to perform required maintenance or other operations or by any member violation of applicable laws or regulations.

#### **Section 9.5. Insurance, Contracts, and Funding.**

The Corporation may maintain insurance at its expense to protect itself and any director, trustee, officer, employee, agent or member of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such persons against such expense, liability or loss under the Washington Business Corporation Act, as applied to nonprofit corporations. The Corporation may, without further action of the Corporation's members, enter into contracts with any director or officer of the Corporation in furtherance of the provisions of this Article and may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to ensure the payment of such amounts as may be necessary to effect indemnification as provided in this Article.

#### **Section 9.6. Indemnification of Employees and Agents of the Corporation.**

The Corporation may, by action of its Board of Directors, provide indemnification and pay expenses in advance of the final disposition of a proceeding to employees and agents of the Corporation with the same scope and effect as the provisions of this Article with respect to the indemnification and advancement of expenses of directors and officers of the Corporation or pursuant to rights granted pursuant to, or provided by, the Washington Business Corporation Act, as applied to nonprofit corporations, or otherwise.

### **Article 10. BYLAWS**

Bylaws of the Corporation may be adopted by the Board of Directors at any regular meeting or any special meeting called for that purpose, so long as they are not inconsistent with the provisions of these Articles of Incorporation. The authority to make, alter, amend or repeal Bylaws is vested in the Board of Directors and may be exercised at any regular or special meeting of the Board of Directors.

**Article 11. INCORPORATORS**

The name and address of the incorporators of the Corporation are:

\_\_\_\_\_  
Name Address

**Article 12. REGISTERED OFFICE AND AGENT**

The address of the initial registered office of the Corporation shall be \_\_\_\_\_, Washington 98\_\_\_\_\_. The name of the initial registered agent of the Corporation at such address shall be \_\_\_\_\_.

**Article 13. AMENDMENTS**

These Articles of Incorporation may be amended as allowed by the Washington Non-profit Corporation Act and pursuant to a unanimous vote of the Board of Directors.

IN WITNESS WHEREOF, the undersigned have signed these Articles of Incorporation:

\_\_\_\_\_  
(Signature)  
Print name: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature)  
Print name: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature)  
Print name: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature)  
Print name: \_\_\_\_\_  
Date: \_\_\_\_\_

**CONSENT TO SERVE AS REGISTERED AGENT**

I, \_\_\_\_\_, hereby consent to serve as Registered Agent in the State of Washington for the LOTT Alliance. I understand that as agent for the corporation, it will be my responsibility to receive service of process in the name of the corporation; to forward all mail to the corporation; and to immediately notify the Office of the Secretary of State in the event of my resignation or of any changes in the registered office of the corporation for which I am agent.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
(Signature of agent)

Address of Registered Office and Agent:

**Exhibit D**  
**BYLAWS**  
**of the**  
**LOTT WASTEWATER ALLIANCE**

The Board of Directors of the LOTT Wastewater Alliance (the “Corporation”) hereby adopts the following Bylaws:

**Article 1. OFFICES**

**Section 1.1. Principal Office.**

The principal office of the Corporation shall be located at its principal place of business or such other place as the Board of Directors may designate. The Corporation may have such other offices, either within or outside of the State of Washington, as the Board of Directors may designate or as the business of the Corporation may require.

**Section 1.2. Registered Office and Agent.**

The Corporation’s initial registered office and registered agent shall be as set forth in the Articles of Incorporation. The registered agent and the address of the registered office may be changed by the Board of Directors.

**Article 2. MEMBERSHIP**

**Section 2.1. Members.**

The Corporation shall have one class of members consisting of four Members. The four Members of the Corporation shall be the City of Olympia, Washington (“Olympia”); the City of Lacey, Washington (“Lacey”); the City of Tumwater, Washington (“Tumwater”); and Thurston County, Washington (the “County”).

**Section 2.2. No Voting Rights.**

Except as expressly provided in this Section 2.2, the Members of the Corporation shall not be members within the meaning of RCW 24.03 and shall not have the authority to manage or vote on any matters related to the business and affairs of the Corporation. Each Member shall have the right to appoint one Director and one Alternate Director to represent such Member on the Board of Directors.

### **Section 2.3. Meetings.**

Because Members do not have voting rights and because each Member appoints a representative Director and Alternate Director to the Board of Directors, there shall be no annual or special meetings of the membership.

## **Article 3. BOARD OF DIRECTORS**

### **Section 3.1. General Powers.**

The business and affairs of the Corporation shall be managed by a Board of Directors. The actions of the Board shall be consistent with and shall effectuate the terms of that certain Interlocal Cooperation Act Agreement for Wastewater Facilities Management by LOTT Wastewater Alliance by and between the Members, dated \_\_\_\_\_, \_\_\_\_\_ (“Agreement”), including without limitation, adopting the revenue allocation formula set forth in the Agreement. The Board shall have the power to do, but shall not be limited to, the following:

- (a) Acquire, construct, receive, own, manage, lease, sell, and otherwise dispose of real property, personal property, intangible property, and the facilities of the Corporation;
- (b) Plan, develop, operate, replace, and maintain the facilities of the Corporation;
- (c) Enter into contracts for goods, services, work, or other benefits to the Corporation;
- (d) Borrow money and issue debt instruments or provide for the borrowing of money and issuance of debt instruments;
- (e) Receive gifts or grants for the planning, design, development, construction, or operation of the facilities of the Corporation, or for the assets or programs to further the Corporation’s purposes, or for other purposes necessary to carry out the purposes of the Corporation;
- (f) Lend money or provide services or facilities to any Member or other governmental utility or governmental service provider in furtherance of the Corporation’s purposes;
- (g) Invest Corporate funds;
- (h) Sue and be sued;
- (i) Hire and fire employees of the Corporation;
- (j) Fix salaries, wages and other compensation of officers and employees;
- (k) Employ or retain engineering, legal, financial or other specialized personnel and consultants as may be necessary to carry out the purposes of the Corporation;

- (l) Impose, alter, regulate, control, and collect rates, charges, and assessments;
- (m) Purchase insurance and participate in pooled insurance and self-insurance programs
- (n) Indemnify Members, officers, and employees in accordance with applicable law;
- (o) Establish policies, guidelines, or rules to carry out the Corporation's powers and responsibilities;
- (p) Convene or appoint committees and advisory bodies as the Board deems appropriate for Member or public review and comment on Corporate matters, efficient staff and Board work, or any other purpose in the best interests of the Corporation and consistent with applicable law;
- (q) Exercise all other powers within the authority of, and that may be exercised individually by all of, the Members with respect to sewage or wastewater conveyance, treatment, disposal, reclamation, reuse, conservation, or other Corporate purposes or functions as set forth in the Agreement; and
- (r) Take any other actions as the Board deems necessary to implement a comprehensive plan and to protect and advance the interests of the Corporation, its property and other assets, its Members, and its ratepayers that are consistent with the Agreement, Chapter 39.34 RCW, and other applicable law.

**Section 3.2. Number and Types.**

The Board of Directors shall consist of four (4) Directors and (4) Alternate Directors. Each Member shall appoint an Alternate Director to represent such Member at meetings of the Board of Directors in which such Member's Director is not present.

**Section 3.3. Qualification and Representation.**

Each Director and each Alternate Director must be serving as a member of the legislative body of the Member that has appointed that Director or Alternate Director. Each Director and Alternate Director shall serve at the will and discretion of the legislative body of the Member that appointed the respective Director or Alternate Director. Each Director and Alternate Director shall represent his or her Member in carrying out his or her responsibility to act in the best interests of the Corporation. The Alternate Director appointed by each Member shall be entitled to attend meetings of the Board and to receive notice of such meetings as provided in these Bylaws but shall not be entitled to vote unless the Director appointed by such Member is absent or unless selected to break a tie vote.

### **Section 3.4. Appointment of Directors.**

#### **Subsection 3.4.1. Initial Directors.**

Each initial Director and Alternate Director named in the Articles of Incorporation shall serve until he or she resigns, becomes disqualified to serve as a Director or Alternate Director, or is removed or replaced by the legislative body of the Member that he or she represents.

#### **Subsection 3.4.2. Successor Directors.**

Each Director and Alternate Director shall be appointed by the legislative body of the Member that each respective Director and Alternate Director is to represent.

### **Section 3.5. Vacancies.**

A vacancy in a Director or an Alternate Director position shall be filled promptly by the legislative body of the Member who appointed the predecessor Director or Alternate Director. Vacancies may occur or arise by removal, disqualification, or resignation, as described below, or by other means.

#### **Subsection 3.5.1. Removal.**

A Director or Alternate Director may be removed at any time by, and at the sole discretion of, the legislative body of the Member that appointed the respective Director or Alternate Director. The removal of a Director or Alternate Director shall constitute a vacancy of that position.

#### **Subsection 3.5.2. Disqualification.**

Whenever a Director or Alternate Director is no longer qualified to serve as a Director or Alternate Director pursuant to these Bylaws, that Director or Alternate Director shall cease to be a Director or Alternate Director and his or her position shall be considered vacant.

#### **Subsection 3.5.3. Resignation.**

Any Director or Alternate Director may resign at any time by delivering written notice to the President or the Secretary of the Corporation at the principal office or registered office of the Corporation, or by giving written notice at any meeting of the Board of Directors. Any such resignation shall take effect at the time specified in the notice, or if the time is not specified, upon delivery of the notice. Upon the effective date of the resignation, that position shall be considered vacant. Unless otherwise specified in the notice, the acceptance of such resignation shall not be necessary to make it effective.

### **Section 3.6. Compensation and Expenses.**

Directors and Alternate Directors shall not receive compensation for their service as Directors and Alternate Directors. Consistent with any applicable law, Directors and Alternate Directors may receive reimbursement for expenditures incurred on behalf of the Corporation.

## **Article 4. ACTIONS OF BOARD OF DIRECTORS**

### **Section 4.1. Regular Meetings.**

Regular meetings of the Board of Directors shall be specified as to the date, time and place for the holding of such regular meetings by the adoption of a resolution of the Board of Directors.

### **Section 4.2. Special Meetings.**

Special meetings of the Board of Directors may be called by or at the written request of the President or any two (2) Directors. Notice of special meetings of the Board of Directors shall be made as set forth in Section 4.6.

### **Section 4.3. Meetings by Telephone.**

Members of the Board of Directors may participate in a meeting of such Board of Directors by means of a conference telephone or similar communication equipment if all persons participating in the meeting can hear each other at the same time and the participation complies with the Open Public Meetings Act, Chapter 42.30, as may be amended. Participation by such means shall constitute presence in person at a meeting.

### **Section 4.4. Place of Meetings.**

All meetings shall be held at the principal office of the Corporation or at such other place within the State of Washington designated by the Board of Directors, by any persons entitled to call a meeting, or by a waiver of notice signed by all of the Directors and Alternate Directors.

### **Section 4.5. Notice of Meetings.**

Where notice of a meeting of the Board of Directors is required by the Articles of Incorporation or these Bylaws, such notice shall be given to each Director and Alternate Director in writing or by personal communication with Director or Alternate Director not less than five (5) calendar days before the meeting. Notices in writing may be hand delivered or sent by U.S. mail or facsimile transmission to the Director or Alternate Director at his or her address shown on the records of the Corporation. Neither the business to be transacted at, nor the purpose of, the meeting need be specified in the notice of such meeting, unless specifically required by the Articles of Incorporation or these Bylaws. If a notice is delivered by mail, the notice shall be deemed effected when deposited in the official government mail properly addressed with postage prepaid. If notice is given by facsimile transmission, the notice shall be deemed effective upon receipt of the facsimile transmission confirmation showing the facsimile transmission was received at the Director's or Alternate Director's facsimile number shown on the records of the Corporation. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original document. At the request of the Secretary, any person will confirm facsimile transmitted signatures by signing an original document.

## **Section 4.6. Waiver of Notice.**

### **Subsection 4.6.1. Written Waiver of Notice.**

Whenever any notice is required to be given to any Director or Alternate Director under the provisions of these Bylaws, the Articles of Incorporation or applicable Washington law, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the waiver of notice of such meeting.

### **Subsection 4.6.2. Waiver of Notice by Attendance.**

The attendance of a Director or Alternate Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director or Alternate Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

## **Section 4.7. Quorum.**

The attendance of a majority of Directors (or their respective Alternate Directors) in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. For purposes of these Bylaws, "majority" shall mean a number more than one-half. If a quorum is not present at a meeting, any one Director present may adjourn the meeting.

## **Section 4.8. Manner of Acting.**

The act of the majority of the Directors (or their respective Alternate Directors) present at a meeting at which there is a quorum shall be the act of the Board of Directors, unless the vote of a greater number is required, or a tie-breaking procedure is provided by these Bylaws, the Articles of Incorporation, a valid Board resolution, or applicable Washington law.

### **Subsection 4.8.1. Tie-breaking procedure.**

In the event of a tie vote on any matter requiring a majority vote of Directors, the Directors shall: (1) randomly choose an Alternate Director to assist in resolving the tie vote pursuant to these Bylaws; and (2) table the matter to the following Board of Directors meeting, which shall be calendared as a special or regularly scheduled meeting within the next twenty-one (21) days or as soon thereafter as all Directors can be present together with the randomly-chosen Alternate Director. At said meeting, all Directors, including the randomly-chosen Alternate Director, shall participate in the discussion and vote on the matter or related matters until such time as the issue has been resolved by a majority affirmative vote, defeated by a majority vote, or withdrawn.

**Subsection 4.8.2. Alternate Director randomly chosen to serve in a tie-breaking situation.**

The Board shall select the Alternate Director to assist in resolving a tie vote by a random drawing of the current Alternate Directors' names from a hat or other container; , however, no Alternate Director shall serve as a tie-breaker in two consecutive tie vote matters.

**Subsection 4.8.3. Actions requiring unanimous votes.**

In addition to any action required by the Articles of Incorporation or applicable Washington law to be by unanimous vote of the Board of Directors, the following actions shall be taken only by unanimous vote of the Board of Directors:

- (a) Approval or amendment of the comprehensive plan for the Corporation;
- (b) Revisions of or amendments to the Articles of Incorporation or Bylaws of the Corporation, or dissolution of the Corporation;
- (c) Revision of the allocation of costs as to new connection charges and monthly rates set forth in the Agreement;
- (d) Modification or amendment of the LOTT Discharge and Industrial Pretreatment Regulations pursuant to Section 7.1 of the Agreement; and
- (e) Establishment or modification of pretreatment permit fees, charges, and actions pursuant to Section 7.2 of the Agreement.

At least eighteen (18) calendar days in advance of taking any such action, the Board shall distribute a proposed Board resolution or motion regarding such action to the Clerk of each Members' legislative body, by any reasonable method of distribution, including but not limited to, deposit in the U.S. Mail, facsimile, hand delivery, or electronic mail.

**Section 4.9. Presumption of Assent.**

A Director (or, where authorized by these Bylaws to cast a vote, an Alternate Director) of the Corporation present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken, unless the Director's or Alternate Director's dissent or abstention is entered in the minutes of the meeting or the Director or Alternate Director files a written dissent or abstention to such action with the person acting as secretary of the meeting before the adjournment of the meeting or forwards such dissent or abstention by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a Director or Alternate Director who voted in favor of such action.

**Section 4.10. Open Public Meetings.**

Meetings of the Board are subject to the Open Public Meetings Act, Chapter 43.20 RCW. Accordingly, the Board shall ensure that its deliberations are conducted openly and that the

actions of the Corporation are taken openly.

**Section 4.11. Procedure.**

The Board shall conduct its meetings consistent with Robert's Rules of Order on Parliamentary Procedure, so far as applicable and when not inconsistent with these Bylaws, the Articles of Incorporation, the Agreement, or any resolution of the Board. The Board may adopt additional rules of procedure to govern the conduct of its meetings.

**Article 5. OFFICERS**

**Section 5.1. Officers.**

The officers of the Corporation shall be a President, one Vice President, a Secretary and a Treasurer, each of whom shall be elected by the Board of Directors. Other officers and assistant officers may be elected or appointed by the Board of Directors, such officers and assistant officers to hold office for such period, have such authority and perform such duties as are provided in these Bylaws or as may be provided by resolution of the Board of Directors. Any officer may be assigned by the Board of Directors any additional title that the Board of Directors deems appropriate. Any two or more offices may be held by the same person, except the offices of President and Secretary.

**Section 5.2. Election and Term of Office.**

The officers of the Corporation shall be elected annually by the Board of Directors. Unless an officer resigns or is removed or replaced, he or she shall hold office until the next annual election by the Board of Directors or until the officer's successor is elected and assumes the office, whichever is later.

**Section 5.3. Vacancies.**

A vacancy in any office created by the resignation, removal, replacement, or any other cause may be filled by the Board of Directors for the unexpired portion of the term or for a new term established by the Board of Directors.

**Section 5.4. Resignation.**

Any officer may resign at any time by delivering written notice to the President, a Vice President, the Secretary or the Board of Directors or by giving oral or written notice at any meeting of the Board of Directors. Any such resignation shall take effect at the time specified in the notice, or if the time is not specified, upon delivery of the notice and, unless otherwise specified in the notice, the acceptance of such resignation shall not be necessary to make it effective.

**Section 5.5. Removal.**

Any officer or agent elected or appointed by the Board of Directors may be removed from office by the Board of Directors whenever in its judgment the best interests of the

Corporation would be served thereby. Such removal shall be without prejudice to the contract rights, if any, of the person so removed.

#### **Section 5.6. President.**

The President shall preside over meetings of the Board of Directors. The President may sign deeds, mortgages, bonds, contracts or other instruments, except when the signing and execution thereof have been expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Corporation or are required by law to be otherwise signed or executed by some other officer or in some other manner. In general, the President shall perform all duties incident to the office of President and such other duties as are assigned to him or her by the Board of Directors.

#### **Section 5.7. Vice President.**

In the event of the death of the President or his or her inability to act, the Vice President shall perform the duties of the President, except as may be limited by resolution of the Board of Directors, with all the powers of, and subject to, all of the restrictions upon the President. The Vice President shall have, to the extent authorized by the President or the Board of Directors, the same powers as the President to sign deeds, mortgage, bonds, contracts or other instruments. The Vice President shall perform such other duties as from time to time may be assigned to him or her by the President or the Board of Directors.

#### **Section 5.8. Secretary.**

The Secretary shall: (a) keep the minutes of meetings of the members and the Board, and minutes which may be maintained by committees of the Board; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records of the corporation; (d) keep records of the post office address of each member and Director and of the name and post office address of each officer; (e) sign with the President, or other officer authorized by the President or the Board, deeds, mortgages, bonds, contracts, or other instruments; and (f) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the President or the Board.

#### **Section 5.9. Treasurer.**

The Treasurer shall have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for moneys due and payable to the corporation from any source whatsoever, and deposit all such moneys in the name of the corporation in banks, trust companies or other depositories selected in accordance with the provisions of these Bylaws, the Agreement, and applicable law; and in general perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the President or the Board.

### **Section 5.10. Salaries.**

The officers shall serve without salary unless they are employees of the Corporation. No officer shall be prevented from receiving a salary by reason of the fact that he or she is a Director or Alternate Director of the Corporation. Consistent with any applicable law, officers may receive reimbursement for expenditures incurred on behalf of the Corporation upon approval of the Board of Directors.

## **Article 6. EMPLOYEES**

Subject to the other provisions of these Bylaws, the Board of Directors may establish such positions of employment as it deems desirable and shall fix the salaries for such positions; provided, there shall be created and maintained the position of Executive Director. This position shall be responsible for implementing Board policy and for general administration of the Alliance functions.

The Executive Director shall have sole authority to appoint persons to fill other positions created by the Board, or to dismiss or discipline such persons. The appointments shall be based on ability and training appropriate for the position. Except for the purpose of inquiry, the Board and its members shall deal with policy implementation or administrative services solely through the Executive Director and neither the Board nor any of its members shall give directions or orders to employees subordinate to the Executive Director. Nothing in this Article shall prevent the Board from freely and fully discussing with the Executive Director anything pertaining to appointments and removals of subordinate employees.

## **Article 7. ADMINISTRATIVE PROVISIONS**

### **Section 7.1. Books and Records of the Corporation.**

The Corporation shall keep at its principal or registered office copies of its current Articles of Incorporation and Bylaws; correct and adequate records of accounts and finances; minutes of its proceedings; records of the name and address of each Member, Director, Alternate Director, and officer; and such other records as may be necessary or advisable. All books and records of the Corporation shall be open at any reasonable time to inspection by any Director or Alternate Director.

### **Section 7.2. Books and Records of Members.**

Any Director or a representative of that Director may examine the books and records of any Member which relate to the Corporation (including, but not limited to, the Corporation's assets, property, facilities, governance, and finance). After provision of reasonable notice, such books and records may be examined at any reasonable time during business hours of that Member. The Board may appoint an auditor or accountant to review any such books and records and the costs of such review shall be charged to the Corporation, which in turn may include such costs as an expense to be shared jointly among all Members.

**Section 7.3. Accounting Year.**

The accounting year of the Corporation shall be the twelve months ending December 31 of each year.

**Article 8. AMENDMENTS**

These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by a unanimous vote of the Board of Directors.

THE FOREGOING BYLAWS were adopted by the Board of Directors on

\_\_\_\_\_.

\_\_\_\_\_

Secretary

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## **Exhibit E**

LOTT System Service Area (Urban Growth Area Boundary, Ch. 36.70 RCW)

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## Exhibit F

### ALLOCATION OF COSTS TO NEW CONNECTIONS AND MONTHLY RATES

The INTERLOCAL COOPERATION ACT AGREEMENT FOR WASTEWATER MANAGEMENT BY THE LOTT WASTEWATER ALLIANCE recognizes two principal revenue sources for LOTT: 1) revenues from the one-time connection charge (Capacity Development Charge) received at issuance of building permit for each new connection to the LOTT System, and 2) monthly rate revenues (Wastewater Service Charge) received based on each Participant’s number of Equivalent Residential Units (ERUs).

There are two types of capital facilities costs: 1) new capacity facilities or those capital expenditures necessary to provide additional wastewater management facilities to serve additional wastewater flows, and 2) system upgrades or capital modifications of existing facilities necessary to improve efficiency or meet higher water quality standards for water treated and discharged by LOTT. Certain capital projects could contain both cost types. In considering future facilities, LOTT chooses to associate new capacity costs primarily with connection charge revenues and system upgrade costs primarily with monthly rates to the extent those costs provide for connections existing at the time the upgrade is constructed. Accordingly, for each facility addition or upgrade project, there is an allocation of the facility cost to the two cost types LOTT is choosing to recognize.

**Allocation for New Capacity Projects.** Projects to create new capacity facilities are divided into four types. These project costs are to be paid using the allocation of revenue sources described in the following table follows:

| <i>Project Type</i>  | <i>%<br/>Capacity<br/>Development<br/>Charge</i> | <i>%<br/>Wastewater<br/>Service<br/>Charge</i> |
|--|--|--|
| <b>Plants</b> – Satellite wastewater treatment plants and associated downstream conveyance to send treated Class A water to polishing ponds  | 90%  | 10%  |
| <b>Ponds</b> – Polishing ponds which further treat Class A water from satellite plants and serve to store Class A water for use, recharge basins which infiltrate unused Class A from polishing ponds, and associated conveyance | 80%  | 20%  |
| <b>Pipes</b> – <b>New</b> sewer interceptors, piping and existing pipe modifications necessary to convey wastewater to satellite wastewater treatment plants   | 100%   | 0%   |

**Allocation for System Upgrades.** Projects which upgrade or replace existing LOTT facilities are considered System Upgrades. Recognizing that these projects will usually include

provision for extra capacity, and based on a review of the incremental cost associated with this extra capacity for System Upgrade projects in the Plan, these project costs are to be paid using 9% Capacity Development Charge revenues and 91% Wastewater Service Charge revenues.

## Exhibit G

### LOTT DISCHARGE AND INDUSTRIAL PRETREATMENT REGULATIONS

#### 1. PURPOSE AND POLICY.

This ordinance sets forth uniform requirements for direct and indirect contributors into the wastewater collection systems and the Regional Wastewater Treatment Facility for the Cities of Lacey, Olympia and Tumwater and for Thurston County. This ordinance enables the Cities of Lacey, Olympia, and Tumwater and Thurston County to comply with all applicable State and Federal laws required by the Clean Water Act of 1977, and amendments thereof, and the General Pretreatment Regulations (40 CFR, Part 403). The objectives of this ordinance are:

- A. To prevent the introduction of pollutants into the POTW (Publicly Owned Treatment Works) which will interfere with the operation of the system or contaminate the resulting sludge;
- B. To prevent the introduction of pollutants into the POTW which will pass through the system inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system;
- C. To ensure that the quality of the wastewater treatment plant sludge is maintained at a level which allows its use and disposal in compliance with applicable statutes and regulations;
- D. To provide for equitable distribution of wastewater costs among dischargers and establish a system of fees and charges that recovers the cost of the Industrial Pretreatment Program;
- E. To protect POTW personnel who may be affected by wastewater and sludge in the course of their employment and to protect the general public;

Except as otherwise provided herein, the Plant Manager shall administer and implement the provisions of this ordinance, and shall conduct other activities as set forth in Sections 6,7 and 8 of the Intergovernmental Agreement for Industrial Waste Pretreatment Program of April 23, 1993. Any powers granted to or duties imposed upon the Plant Manager may be delegated by the Plant Manager to personnel under the Plant Manager's direction.

This ordinance shall apply to all users of the POTW. The ordinance authorizes the issuance of wastewater discharge permits; authorizes monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

## 2. DEFINITIONS.

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this ordinance, shall have the following meanings:

A. ACT - The Clean Water Act (33 U.S.C. 1251 et. seq.), as amended.

B. AKART - This is an acronym for All Known, Available, and Reasonable methods of prevention, control, and Treatment. AKART shall represent the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge. The concept of AKART applies to both point and nonpoint sources of pollution. The term "best management practices" is considered a subset of the AKART requirement.

C. APPLICABLE PRETREATMENT STANDARD - For any specified pollutant, prohibited discharge standards and discharge limitations as defined herein, State of Washington pretreatment standards, or EPA's Categorical Pretreatment Standards (when effective), whichever standard is appropriate or most stringent.

D. APPROVAL AUTHORITY - The Washington State Department of Ecology.

E. AUTHORIZED REPRESENTATIVE OF THE USER shall mean:

1. If the user is a corporation:

a. The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

b. The manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

2. If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively;

3. If the user is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or his/her designee;

4. The individuals described in paragraphs 1 through 3 above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the Plant Manager.

F. BOD (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20 degrees C., expressed in parts per million (mg/l) by weight.

G. CATEGORICAL PRETREATMENT STANDARDS shall mean any regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with Section 307(b) and (c) of the Act which apply to a specific category of users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

H. CATEGORICAL USER - a user covered by one of EPA's Categorical Pretreatment Standards.

I. COLOR - The optical density at the visual wave length of maximum absorption, relative to distilled water. One-hundred percent (100%) transmittance is equivalent to zero (0.0) optical density.

J. COOLING WATER/NON-CONTACT COOLING WATER - Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product. Cooling water may be generated from any use, such as air conditioning, heat exchangers, cooling or refrigeration to which the only pollutant added is heat.

K. COMPOSITE SAMPLE - The sample resulting from the combination of individual wastewater samples taken at selected intervals based on an increment of either flow or time.

L. DOMESTIC USER (RESIDENTIAL USER) shall mean any person who contributes, causes, or allows the contribution of wastewater into the POTW that is of a similar volume and/or chemical make-up as that of a residential dwelling unit. Discharges from a residential dwelling unit include up to 900 cu.ft. of flow, with up to 300 mg/l of BOD, and 300 mg/l of TSS, per month.

M. ENVIRONMENTAL PROTECTION AGENCY (EPA) - The U.S. Environmental Protection Agency or, where appropriate, the Regional Water Division Director, or other duly authorized official of said agency.

N. EXISTING SOURCE - Any Categorical Industrial User whose construction or operation commenced prior to the publication by EPA of proposed Categorical Pretreatment Standards, which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.

O. EXISTING USER shall refer to all Industrial Users except Categorical Users which were discharging wastewater prior to the effective date of this ordinance. Any person that buys an existing facility that is discharging non-domestic wastewater will be considered an "Existing User" if no significant changes are made in the manufacturing operation.

P. GRAB SAMPLE - A sample which is taken from a wastestream on a one-time basis without regard to the flow in the wastestream and without consideration of time.

Q. INTERFERENCE - Any discharge which, alone or in conjunction with a discharge or discharges from other sources, either:

1. Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; or
2. Is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations); Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), or 40 CFR part 503, and including State Regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

R. MAXIMUM ALLOWABLE DISCHARGE LIMIT (DISCHARGE LIMITATION) - The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composite sample collected, independent of the industrial flow rate and the duration of the sampling event.

S. MINOR INDUSTRIAL USER (MIU) - Any Industrial User which does not otherwise qualify as a Significant Industrial User of the POTW, identified by the Plant Manager as having the potential to spill or discharge chemicals or slugs of wastewater to the POTW, or the potential to discharge a waste stream that, when taken into account with the waste streams of other industrial users, may have a significant impact on the POTW.

T. NPDES - National Pollutant Discharge Elimination System permit program as administered by the U.S.EPA or State.

#### U. NEW SOURCE

1. Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

a. The building, structure, facility, or installation is constructed at a site at which no other source is located; or

b. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

c. The production or wastewater generating process of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation

meeting the criteria of Part 1, b. or c. above but otherwise alters, replaces, or adds to existing process or production equipment.

3. Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

a. Begun, or caused to begin as part of a continuous on-site construction program any placement, assembly, or installation of facilities or equipment; or significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities necessary for the placement, assembly, or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

V. NEW USER - Any Non-Categorical Industrial User that applies to the Participant for a new building permit or otherwise makes known their intentions to begin operations which will generate non-domestic wastes. This includes any person occupying existing buildings and planning to discharge wastewater to the POTW's collection system after the effective date of this ordinance. Also included are Industrial Users which have been previously overlooked or otherwise not identified by the Plant Manager as a Minor or Significant Industrial User.

W. pH - The logarithm of the reciprocal of the weight of hydrogen ions, in grams per liter of solution.

X. PARTICIPANT - means the City or County of \_\_\_\_\_ Washington, a municipal corporation or county organized and existing under and by virtue of the laws of the State of Washington. "WITHIN THE PARTICIPANT JURISDICTION" shall mean within the Participant jurisdiction boundaries as now or hereafter constituted.

Y. PASS THROUGH - Discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

Z. PERMITTEE - A Person or Industrial User issued a wastewater discharge permit.

AA. PERSON - Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Federal, State, or local governmental entities.

BB. PLANT MANAGER shall mean the Manager of the regional Publicly Owned Treatment Works (POTW) facilities as described and built pursuant to the "Intergovernmental Contract for Wastewater Facilities Management" of November, 1976, and successor agreements, designated by the Participant as the person responsible determining Industrial User compliance with applicable pretreatment standards and requirements set forth in this ordinance, or that person's duly authorized representatives.

CC. POLLUTANT - Any substance discharged into the POTW which if discharged directly would alter the chemical, physical, biological, or radiological integrity of the water of the state. This includes, but is not limited to the priority pollutant list listed in 40 CFR Part 403.

DD. POTW shall mean the system of conduits, pumps, treatment plants, structures and properties, including without limitation all properties, interests, physical and intangible rights of every kind or nature owned or held by the Participant and all appurtenances thereto, however acquired, insofar as they relate to or concern drainage, transportation, storage, or treatment, in any manner whatsoever, of waste matter or storm and surface water of any nature now or hereafter permitted by this chapter to enter the POTW which is tributary to treatment facilities described in or built pursuant to the Intergovernmental Contract for Wastewater Facilities Management of November, 1976, and successor agreements. Sanitary Sewers and Storm Drains, separately and in combination, are, without limitation, included in the POTW.

EE. PREMISES shall be defined as a continuous tract of land, building, or group of adjacent buildings under a single control with respect to use of water and responsibility for payment therefore. Subdivision of such use or responsibility shall constitute a division into separate premises as herein defined, except where more than one dwelling is being served through the same water meter, in which case, each of said dwellings shall constitute a separate premises and shall be subject to the same separate charges as if separate single-family dwellings.

FF. PRETREATMENT - The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant

properties in waste water to a less harmful state, prior to or in lieu of discharging or otherwise introducing such pollutants to the POTW in order to be consistent with the discharge requirements of this Ordinance. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means except by diluting the concentration of the pollutants unless specifically allowed by an applicable pretreatment standard.

GG. PRETREATMENT REQUIREMENT(S) - Any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard. Pretreatment requirements shall include, but not be limited to all permit requirements, reporting requirements, and other requirements specified by the Plant Manager as necessary to comply with the provisions of this ordinance.

HH. PRIORITY POLLUTANT - Any of the substances so designated by the Washington State Department of Ecology or the United States Environmental Protection Administration such as the Priority Pollutants listed in 40 CFR Part 403.

II. SANITARY SEWERS shall mean only those portions of the POTW which are designated by the Participant to carry, treat or dispose of waste matter not constituting storm or surface water permitted by or under this ordinance to enter the POTW.

JJ. SIGNIFICANT INDUSTRIAL USER (SIU) - Any industrial user of the POTW who:

1. Is subject to categorical pretreatment standards; or
2. Has a process wastewater flow of 25,000 gallons or more per average work day; or
3. Has a discharge flow greater than 5 percent or more of the average dry weather hydraulic or organic capacity of the treatment plant; or
4. Is designated as such by the Plant Manager on the basis that it has a reasonable potential, either singly or in combination with other contributing industries, for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement;
5. Upon a finding that a user meeting the criteria in Subsections 2-4 has no reasonable potential for adversely affecting the POTW's operation or for violating any applicable pretreatment standard or requirement, the Plant Manager may at any time, on his own

initiative or in response to a petition received from a user, and in accordance with procedures in 40 CFR 403.8(f)(6) determine that such user should not be considered a significant industrial user.

KK. SLUGLOAD shall mean any discharge of a non-routine, episodic nature including, but not limited to an accidental spill or non-customary batch discharge.

LL. STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE - A classification pursuant to the "Standard Industrial Classification Manual" issued by the United States Office of Management and Budget.

MM. STORM DRAINS shall mean only those collection and conveyance systems which do, or are designated by the Participant to; detain or retain, carry or dispose of storm and surface water and such other waters as are not required by or under this ordinance or other applicable law to be disposed of through sanitary sewers, in accordance with the provisions hereinafter set forth. Storm drains shall, without limitation, include all properties, interests, and rights of the Participant insofar as they relate to or concern storm or surface water sewerage, whether natural or constructed, in and to the drainage or storage, or both, of storm or surface waters, or both, including without limitation through, under or over lands, landforms, watercourses, sloughs, streams, ponds, lakes, and swamps.

NN. STORM WATER - Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

OO. TOTAL SUSPENDED SOLIDS (TSS) shall mean the total matter suspended in water removable by laboratory filtration using standard method 2540 D or equivalent, and expressed in mg/l.

PP. TOXIC POLLUTANT shall mean those pollutants, or combination of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Plant Manager, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformations, in such organisms or their offspring, including those listed as toxic in regulations promulgated by the U.S.EPA.

QQ. TREATMENT PLANT EFFLUENT - Discharge from the POTW into waters of the United States.

RR. UPSET shall mean an exceptional incident in which a user unintentionally and temporarily is in a state of noncompliance with the applicable pretreatment standards due to factors beyond the reasonable control of the user, and excluding noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation thereof.

SS. USER (INDUSTRIAL USER- IU) shall mean any Person with a source of discharge which does not qualify that person as a Domestic User who discharges an effluent into the POTW by means of pipes, conduits, pumping stations, force mains, tank trucks, constructed drainage ditches, intercepting ditches, and all constructed devices and appliances appurtenant thereto.

TT. WASTEWATER - Industrial waste, sewage, treated or untreated waters, or any other waste including that which may be combined with any ground water, surface water or storm water, that may be discharged to the POTW.

UU. WASTEWATER DISCHARGE PERMIT (INDUSTRIAL WASTEWATER DISCHARGE PERMIT, OR DISCHARGE PERMIT) - An authorization or equivalent control document issued by the Participant to users discharging wastewater to the POTW. The permit may contain appropriate pretreatment standards and requirements as set forth in this ordinance.

### 3. PROHIBITED DISCHARGE STANDARDS.

#### General Prohibitions:

No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other National, State, or local pretreatment standards or requirements.

#### Specific Prohibitions:

No person, business, industry or entity shall discharge or permit or cause the discharge of waste or wastewater of any kind or nature into the POTW with any of the following properties:

A. Any liquids, solids or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction to cause fire or

explosion, or which have closed-cup flash point of less than 140 degrees F (60 degrees C), or be injurious in any other way to the operation of the POTW. At no time shall two successive readings on a combustible gas meter, at the point of discharge into the system, (or at any point in the system) be more than five percent (5%) or any single reading over ten percent (10%) of the Lower Explosive Limit (LEL) of the meter.

B. Solid or viscous substances which will or may cause obstruction to the flow in a sewer or other interference with the operation of the POTW, including but not limited to, any garbage or putrescible material that has not been properly comminuted to one-fourth inch or less in any direction. Waste from garbage grinders shall not be discharged into the POTW except wastes generated in preparation of food normally consumed on the premises. Such grinders must shred the waste to such a degree that all particles are comminuted to one fourth inch or less in any direction and are carried freely under normal flow conditions prevailing in sanitary sewers. Garbage grinders shall be connected to an approved grease trap. No discharge permitted by this section may contain plastic, paper products, or inert material.

C. Any wastewater having a pH of less than 6 or greater than 9 or having any other corrosive property capable of causing damage or hazard to structures, equipment, or personnel of the system.

D. Any wastewater having a fat waste, oil, or grease (FOG) content, whether or not emulsified, in excess of fifty (50) milligrams per liter; or any substance which may solidify or become discernibly viscous at temperatures above zero degrees Centigrade (32 degrees F.) This restriction applies to non-biodegradable cutting oil, or products of mineral origin. FOG is defined as the combined total of vegetable, animal, and petroleum based fats, oils, and greases.

E. Any wastewater containing any pollutant, including oxygen demanding pollutants, in sufficient quantity, either singly or by interaction, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, or be in violation of any applicable statute, rule, regulation or ordinance of any public agency, including U.S.EPA.

F. Any noxious or malodorous liquids, gases, or solids which either singly or by interaction are capable of creating a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for their maintenance and repair, or capable of causing acute worker health or safety problems.

G. Any substance which may cause the POTW's treatment residues, sludges, or scums to be unsuitable for reclamation and reuse or permitted disposal or to interfere with the reclamation or disposal process. In no

case shall a substance be discharged to the POTW that will cause the POTW to be in noncompliance with sludge use or disposal criteria, guidelines or regulations developed under Section 503 of the Act; or with any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act; or with the Clean Air Act, the Toxic Substances Disposal Act, or State standards applicable to the sludge management method being used.

H. Any substance which will cause the POTW to violate its NPDES and/or other Disposal System Permits, or cause a violation of any state air or water quality standard or solid and hazardous waste regulation.

I. Any substance with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.

J. Wastewater having a temperature which will inhibit biological activity in the treatment plant resulting in interference, in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104 degrees F (40 degrees C) unless the Approval Authority, upon the request of the POTW, approves alternate temperature limits..

K. Any trucked or hauled pollutants, except at discharge points designated by the POTW, under permits issued by the Participant with the approval of the Plant Manager.

L. Any slugload of any type of pollutant, including Oxygen Demanding Pollutants.

M. Persistent pesticides and/or pesticides regulated by the Federal Insecticide Fungicide Rodenticide Act (FIFRA).

N. Concentrations of dissolved solids including but not limited to, sodium chloride, calcium chloride, or sodium sulfate which are so high as to constitute a danger to the wastewater treatment processes or equipment.

O. Concentrations of inert suspended solids such as, but not limited to, fuller's earth, lime slurries, lime residue, or fly ash which are so high as to constitute a danger to the POTW.

P. Any infectious wastes that, in the opinion of the County Health Officer, significantly increase the risk of disease transmission beyond the level of risk normally associated with domestic sewage.

Q. Wastewater containing any radioactive wastes or isotopes except under conditions developed by the Plant Manager in compliance with applicable State or Federal regulations. No person shall discharge or cause to be discharged any radioactive waste into the POTW except when that person is licensed for the use of those radioactive materials by the Department of Health and the waste meets all requirements of WAC 246-221-190, "Disposal By Release Into Sanitary Sewerage Systems", and the average concentration limits as defined in WAC 246-221-290 Appendix A, Table I, Column 2, and WAC 246-221-300 Appendix B and all other applicable local, State and Federal regulations.

R. Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.

4. PROHIBITIONS ON STORM DRAINAGE, GROUNDWATER AND UNPOLLUTED WATER.

Storm water, groundwater, rainwater, street drainage, subsurface drainage, yard drainage, roof drainage, or unpolluted water, including, but not limited to, non-contact cooling water, or blow-down from cooling towers or evaporative coolers, shall not be discharged through direct or indirect connection to any sanitary sewer. With the approval of the Plant Manager, the Participant may, but shall not be required to, permit such discharge when no reasonable alternative method of disposal is available. If a permit is granted for the discharge of such water into a sanitary sewer, the user shall pay the applicable charges and fees and meet such other conditions as required from time to time by the Participant.

5. DISCHARGE LIMITATIONS.

A. No person shall discharge wastewater containing in excess of (as measured on a daily average of composite samples):

| mg/l      | component            |
|-----------|----------------------|
| 0.2 mg/l  | arsenic              |
| 0.2 mg/l  | cadmium              |
| 1.0 mg/l  | chromium, total      |
| 0.25 mg/l | chromium, hexavalent |
| 0.5 mg/l  | copper               |
| 0.64 mg/l | cyanide, total       |
| 0.25 mg/l | cyanide, free        |
| 0.4 mg/l  | lead                 |
| 0.05 mg/l | mercury              |
| 0.5 mg/l  | nickel               |

|     |      |                                    |
|-----|------|------------------------------------|
| 0.2 | mg/l | non-halogenated phenols or cresols |
| 0.2 | mg/l | silver                             |
| 1.0 | mg/l | zinc                               |

B. The above limits apply at the point where the wastewater is discharged to the POTW (end of pipe). All concentrations for metallic substances are for "total" metal unless indicated otherwise. The Plant Manager may develop mass limitations to be imposed in addition to, or in place of, the concentration-based limitations above. Where a user is subject to a categorical pretreatment standard and a discharge limitation as defined herein for a given pollutant, the more stringent limit or applicable pretreatment standard shall apply. A person will also be subject to more stringent and/or additional limits if required by the application of AKART.

C. No person, business, industry or entity shall increase the use of potable or process water in any way, nor mix separate waste streams for the purpose of diluting a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the standards set forth in this chapter.

D. The discharge into the POTW of any wastewater or wastes having:

1. A 5 day biochemical oxygen demand greater than three hundred (300) parts per million by weight.
2. Containing more than three hundred (300) parts per million by weight of suspended solids,
3. Containing any quantity of substances having the characteristics described above in this section; or
4. Having an average daily flow greater than two percent (2%) of the average daily flow of the POTW;

shall require the evaluation and concurrence of the Plant Manager and be subject to payment as determined by applicable fees for waste strength and flow.

E. The National categorical pretreatment standards found in 40 CFR Chapter I, Subchapter N, Parts 405-471, as amended, are incorporated herein by reference as though fully set forth and shall apply to industries subject to these standards whenever categorical standards are more stringent than applicable state or local discharge limitations.

6. LIMITATIONS ON POINT OF DISCHARGE.

No person shall discharge any substance directly into a manhole or other opening in the POTW other than through an approved building sewer, unless that person has been issued a permit by the Participant. If a permit is issued for such direct discharge, the user shall pay the applicable charges and fees and shall meet such other conditions as determined by the Plant Manager. Septage haulers shall comply with the limitations set forth in their permits, as specified by the Plant Manager and;

A. Septic tank waste may be introduced into the POTW only at a designated receiving structure within the treatment plant area, and at such times as are established by the Plant Manager. Such wastes shall not violate this section of the ordinance or any other requirements established or adopted by the Participant. Wastewater discharge permits for individual vehicles to use such facilities shall be issued by the City of Olympia.

B. Septage haulers may only discharge loads at locations specifically designated by the Plant Manager. No load may be discharged without prior consent of the Plant Manager. The Plant Manager may collect samples of each hauled load to ensure compliance with applicable pretreatment standards. The Plant Manager may require the hauler to provide a waste analysis of any load prior to discharge.

C. Septage haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the waste hauler, permit number, truck identification, sources of waste, and volume and characteristics of waste.

D. Fees for dumping hauled wastes may be established as part of the user fee system as authorized within this ordinance.

E. Septic Haulers may not discharge material designated as hazardous or dangerous wastes as specified by 173.303 WAC or knowingly discharge septage mixed with hazardous and/or dangerous wastes.

7. MATTER EXCLUDED FROM STORM DRAINS.

Unpolluted water regulated by this ordinance including, but not limited to, cooling water, or blow-down from cooling towers or evaporative coolers may not be directed into a storm drain except under the authorization and direction of the Participant and under engineering and technical conditions set by the Plant Manager to carry out the purposes of this chapter.

8. SAMPLING AND TESTING OF WASTEWATER.

Users shall allow the Plant Manager or his/her designee ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

A. Where a user has security measures in force which require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the Plant Manager will be permitted to enter without delay for the purposes of performing specific responsibilities.

B. The Plant Manager shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.

C. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the Plant Manager and shall not be replaced. The costs of clearing such access shall be born by the user.

D. Unreasonable delays in allowing the Plant Manager access to the user's premises shall be a violation of this ordinance.

E. Failure to allow inspection, sampling, monitoring, or metering as authorized by this section shall be grounds for revocation of the user's discharge permit.

F. Nothing herein shall be construed to limit the Participant's rights to obtain a criminal search warrant.

G. The Plant Manager will follow the sampling and testing procedures outlined in Section 26.

H. No person shall willfully or negligently break, damage, destroy, uncover, deface, tamper with, or prevent access to any structure, appurtenance or equipment, or other part of the POTW. Any person found in violation of this requirement shall be subject to the sanctions set out in this ordinance.

9. APPROVAL OF WASTEWATER DISCHARGES.

The Participant reserves the right to enter into special agreements with users setting out special terms under which they may discharge to the POTW. Any

such special agreements must be approved in advance by the Plant Manager. In no case will a special agreement waive compliance with a categorical pretreatment standard or federal pretreatment requirement. However, the user may request a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15. They may also request a variance from the categorical pretreatment standard from the Approval Authority in accordance with 403.13. The Participant may allow discharge of high BOD, TSS, or flow rate for any permittee upon approval of the Plant Manager, and subject to charges as provided by section 14 of this ordinance.

#### 10. PRETREATMENT OF INDUSTRIAL WASTES.

When at any time it becomes apparent to the Plant Manager or Participant that does not conform to the requirements outlined in Sections 3 through 7, or the applicable pretreatment standards or requirements; it is hereby required that before such matter may be discharged into the POTW, the producer thereof shall treat same at the producer's own expense to a degree that will produce an effluent which does conform to the said requirements.

A. Users shall provide all known, available, and reasonable methods of prevention, control and treatment (AKART) as required to comply with this ordinance and State and Federal regulations and shall achieve compliance with all applicable pretreatment standards and requirements within the time limitations as specified by appropriate statutes, regulations, chapters and ordinances. Any facilities required to treat wastewater to satisfy applicable pretreatment standards and requirements, shall be supplied, properly operated, and maintained at the user's expense. Such treatment plants may include, but shall not be limited to, grease traps, chemical or biochemical plants, sedimentation chambers, and any other devices which effect a change of any nature in the characteristics of the matter being treated toward the characteristics of matter permitted.

B. Detailed plans showing the pretreatment facilities shall be submitted to the Plant Manager for review and must be acceptable to the Plant Manager and the Participant, and meet the requirements of Chapter 173-240 WAC for Department of Ecology review, before construction of the facility. The review of such plans by the Participant shall in no way relieve the user from the responsibility of modifying its facility as necessary to produce an effluent acceptable to the Plant Manager under the provisions of this ordinance. The user shall obtain all necessary construction-operating permits from the Participant. Prior to completion of the Wastewater Treatment Facility, the user shall furnish its plan of operations and maintenance procedures for review. All treatment devices shall be subject to the approval of the Plant Manager.

## 11. TRAPS AND INTERCEPTORS.

Any non-residential occupancy shall install the proper type and capacity trap or interceptor to prevent materials from entering the sewer system that cause or may cause stoppages, impair the efficiency of the wastewater collection system, threaten collection system or treatment plant workers, or impair the efficiency of the wastewater treatment plant. Traps or interceptors shall be provided if required by the Uniform Plumbing Code or if determined necessary in the opinion of the Plant Manager.

When required, all non-residential occupancies handling any fats, oils, or greases shall install and maintain a fats, oils, and grease interceptor and/or trap to remove these materials prior to entrance into the sewer system. The use of biological or chemical treatment agents for the emulsification or separation of fats, oils, or greases shall be prohibited. Such non-residential occupancies include, but are not limited to restaurants, wash racks, vehicle service stations, engine or machinery repair shops, delis, cafes, slaughter houses, packing plants, bakeries, food processing operations and commercial, industrial or institutional cooking facilities.

When required, all non-residential occupancies handling flammable or combustible liquids shall install and maintain an oil and flammable liquids interceptor.

When required, all non-residential occupancies producing, handling or discharging solids shall provide adequate and approved sediment traps or interceptors. These traps or interceptors shall be used by, but not limited to, occupancies discharging, or with the potential to discharge, lint, rags, sand, grit, glass, metal, or any other dense material.

All interceptors shall be of a type and capacity approved by the Plant Manager and shall be located as to be readily and easily accessible for cleaning and inspection at the expense of the user or applicant. Where installed, all traps and interceptors shall be maintained by the owner, or at his expense, in a manner that will always prevent the above-mentioned wastes from being carried into the sewer system. Wastes removed from such a facility shall not be reintroduced or disposed of in sanitary or storm sewers.

## 12. MONITORING FACILITIES.

A. Each user shall provide and operate at its own expense a monitoring facility to allow inspection, sampling, and flow measurements of each sewer discharge to the POTW.

B. Each monitoring facility shall be situated on the user's premises, except where such a location would be impractical or cause undue hardship on

the user. The Participant may concur with the facility being constructed in the public street or sidewalk area, providing that the facility is located so that it will not be obstructed by landscaping or parked vehicles. The Plant Manager, whenever applicable, may specify the construction and maintenance of sampling facilities at other locations (for example, at the end of a manufacturing line or wastewater treatment system).

C. There shall be ample room in or near such sampling facility to allow accurate sampling and preparation of samples for analysis. Each user shall at all times maintain required facilities and sampling and measuring equipment in a safe and proper operating condition, at the user's own expense.

D. All monitoring facilities shall be constructed and maintained in accordance with all applicable local construction standards and specifications.

E. The Participant may require the user to install monitoring equipment determined by the Plant Manager to be necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition, by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated to ensure their accuracy.

### 13. ACCIDENTAL DISCHARGE/SLUG CONTROL PLANS.

Each user shall provide protection from accidental discharge of prohibited or regulated materials or substances established by this ordinance. Where necessary, facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the user's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted as specified in this section.

Users shall immediately take action to correct the situation and verbally notify the LOTT facility console monitor upon the occurrence of a "slugload" or accidental discharge of substances prohibited by this ordinance. Written notification including location of the discharge, date and time thereof, type of waste, concentration and volume, and corrective actions must be filed with the Plant Manager within five days of the accidental discharge.

Any user who discharges a slugload of prohibited materials shall be liable for any expense, loss, or damage to the POTW, in addition to any other liabilities established by this ordinance and the amount of any fines imposed on the Participant and/or Plant Manager on account thereof under State or Federal law.

Signs shall be permanently posted in conspicuous places on the user's premises, advising employees whom to call in the event of a slug or accidental discharge. Employers shall instruct all employees who may cause or discover such a discharge with respect to emergency notification procedures.

The Participant may require any user to develop and implement an accidental discharge/slug control plan. Where deemed necessary by the Plant Manager or Participant, facilities to prevent accidental discharge or slug discharges of pollutants shall be provided and maintained at the user's cost and expense. An accidental discharge/slug control plan showing facilities and operating procedures to provide this protection shall be submitted to the Plant Manager for review and approval before implementation. The Plant Manager shall determine which user is required to develop a plan and require said plan to be submitted within 180 days after notification by the Plant Manager or Participant. Each user shall implement its accidental discharge/slug control plan as submitted or as modified after such plan has been reviewed and approved by the Plant Manager. Review and approval of such plans and operating procedures by the Plant Manager shall not relieve the user from the responsibility to modify its facility as necessary to meet the requirements of this Section.

A. Any user required to develop and implement an accidental discharge/slug control plan shall submit a plan which addresses, at a minimum, the following:

1. Description of discharge practices, including non-routine batch discharges;
2. Description of stored chemicals;
3. Procedures for immediately notifying the Plant Manager and Participant of any accidental or slug discharge. Such notification must also be given for any discharge which would violate any of the standards in Sections 3 through 7 of this ordinance; and
4. Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.

14. EXCESS STRENGTH CHARGES.

For industrial waste or other discharges exceeding the BOD and/or Suspended Solids limits defined in Section 5., the following formula shall be used to determine the ERU equivalency of the waste flow. This formula applies only to BOD and/or SS concentrations in excess of 300 mg/l.

A. ERU Equivalent for High Strength Waste shall be the sum of the following:

1. Flow Calculation

$$(P-FLOW) \times \frac{\text{Industry flow, cu. ft./ Month}}{900 \text{ cu. ft./ERU}} = \text{FLOW ERUs}$$

2. BOD Calculation

$$(P-BOD) \times \frac{\text{Industry BOD, mg/l}}{300 \text{ mg/l}} \times \frac{\text{Industry Flow, cu ft/Month}}{900 \text{ cu ft/ERU}} = \text{BOD ERU}$$

3. Suspended Solids (SS) Calculation

$$(P-SS) \times \frac{\text{Industry SS, mg/l}}{300 \text{ mg/l}} \times \frac{\text{Industry Flow, cu ft/Month}}{900 \text{ cu ft/ERU}} = \text{SS ERUs}$$

B. Explanation of terms

1. (P-FLOW) = Percentage treatment costs associated with hydraulic flow

2. (P-BOD) = Percentage treatment costs associated with BOD

3. (P-SS) = Percentage treatment costs associated with SS

4. ERU: (Equivalent Residential Unit) equal to 900 cubic feet of wastewater containing a maximum of 300 mg/l of suspended solids and a maximum of 300 mg/l of BOD.

5. Wastewater Treatment costs used in items 1,2 and 3 above are calculated at years end. The ratios determined shall apply throughout the following year.

6. All monthly charges per ERU established by the LOTT Intergovernmental Contract for Wastewater Facilities Management of November 1976, as amended, shall apply to ERU's calculated by the above formulas.

15. DISCHARGE PERMIT FEES.

Annual discharge permit fees shall be levied on each Significant Industrial User (SIU) and each Minor Industrial User (MIU) based on three criteria: (1) permitted flowrate, (2) permit complexity and (3) potential danger to the collection system or POTW. Each permittee will be evaluated annually by the Plant Manager and placed in one of three categories; with Category III having the highest combination of flow, complexity and risk. The Plant Manager shall use the Permit Fee Category Criteria set forth in the following table:

PERMIT FEE CATEGORY CRITERIA

| CRITERION        | RANGE  | DESCRIPTION  | SCORE |
|------------------|--------|--|-------|
| FLOW:            | High   | >25,000 GPD  | 3     |
|                  | Medium | 1,000 – 25,000 GPD   | 2     |
|                  | Low    | <1,000 GPD   | 1     |
| COMPLEXITY       | High   | Categorical SIU  | 3     |
|                  | Medium | Non-Categorical SIU  | 2     |
|                  | Low    | MIU  | 1     |
| POTENTIAL DANGER | High   | Excess Strength Discharge, High Spill Potential, Large Quantity Of Toxic Materials, High Flows | 3     |
|                  | Medium | All Others   | 2     |
|                  | Low    | Low Spill Potential, No Excess Strength, Low Or No Toxics On Site, Low Flows                   | 1     |

The total scores for all criteria determines the permit category and fee according to the following table:

## PERMIT FEE TABLE

| SCORE | CATEGORY | FEE   |
|-------|----------|-------|
| 3-4   | I        | \$200 |
| 5-7   | II       | \$300 |
| 8-9   | III      | \$400 |

These fees shall be indexed to the current ERU cost, rounded to the nearest \$10. The base level ERU cost is currently \$21. These discharge permit fees are in addition to the excess strength charges required in the previous ordinance section, and shall be collected by the Participant and remitted to the LOTT Fund prior to the end of the calendar month following collection. To encourage reduction in the use of water and generation of wastewater, the annual discharge permit fee will be waived for any permittee that achieves zero industrial wastewater discharge to LOTT in the prior calendar year.

### 16. PERMITS REQUIRED.

A. Permits Required: No Significant Industrial User (SIU) shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the Participant. Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this ordinance and subject the permittee to the sanctions set out in this ordinance. Obtaining a wastewater discharge permit does not relieve a permittee of their obligation to comply with all Federal and State pretreatment standards or requirements or with any other requirements of Federal, State, and local law. Leachate from a solid waste landfill, and condensate from gas recovery systems at a solid waste landfill shall be considered an industrial wastewater and a permit shall be required by the Participant in accordance with this ordinance.

B. Others Regulated: The Plant Manager or Participant may require users not meeting the criteria for a SIU, including liquid waste haulers, to obtain wastewater discharge permits to carry out the purposes of this ordinance, and shall designate these users as Minor Industrial Users (MIUs).

C. Permits for Existing Industrial Users: Any SIU or MIU discharging wastewater into the POTW prior to the effective date of this ordinance, that wishes to continue such discharges, shall within 30 days after notification submit a permit application to the Plant Manager in accordance with Section 18 of this ordinance. Such Dischargers shall not cause or allow discharges to the POTW to continue after one hundred eighty (180) days of the effective date of this ordinance except in accordance with a wastewater discharge permit issued by the Participant.

D. Permits for New Sources and New Users: At least 90 days prior to anticipated start-up, New Sources and New Users that fit the definition of an SIU or MIU shall apply for a wastewater discharge permit and will be required to submit to the Plant Manager at least the information listed in paragraphs (A)-(E) of Section 18. A New Source or New User cannot discharge without first receiving a wastewater discharge permit from the Participant. New Sources and New Users shall give estimates of the information requested in paragraphs C, D, and E of Section 18.

E. Newly Promulgated or Recognized Categorical Wastestreams: Users with wastewater from processes for which applicable categorical pretreatment standards are promulgated and users which are recognized by the Plant Manager as being subject to any existing applicable categorical pretreatment standard will provide actual data for all information of section 18 within 180 days after the effective date of the applicable categorical standard, or within 90 days of being informed by the Plant Manager of applicable categorical standards, whichever is sooner. Such users may continue discharging, subject to the approval and conditions of the Plant Manager, until a permit is issued.

F. Extrajurisdictional Users: Any non-domestic user located within the Lacey, Olympia, Tumwater, and Thurston County service districts shall be required to follow the above procedures.

#### 17. INDUSTRIAL USER SURVEY.

All persons, upon request, shall complete an Industrial User Survey. Each person will provide the survey information in the form prescribed by the Plant Manager or Participant, complete the form to the best of their ability, and return it to the Participant within the allotted time. This requirement is separate from any requirements under this ordinance to complete a permit application.

#### 18. PERMIT APPLICATION.

All users required to obtain a wastewater discharge permit must submit, at a minimum, the following information. The Plant Manager shall approve a form to be used as a permit application. Categorical users submitting the following information shall have complied with 40 CFR 403.12 (b).

A. Identifying information. The user shall submit the name and address of the facility including the name of the operator and owners.

B. Permits. The user shall submit a list of any environmental control permits held by or for the facility.

C. Description of operations. The user shall submit a brief description of the nature, average rate of production, and Standard Industrial Classification of the operation(s) carried out by such Industrial User, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW; number and type of employees; hours of operation; each product produced by type, amount, process or processes, and rate of production; type and amount of raw materials processed (average and maximum per day) and the time and duration of discharges. This description should also include a schematic process diagram which indicates points of discharge to the POTW from the regulated or manufacturing processes. Disclosure of site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections, inspection manholes, sampling chambers and appurtenances by size, location and elevation.

D. Flow Measurement.

1. Categorical User:

The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

- a. Regulated or manufacturing process streams; and
- b. Other streams as necessary to allow use of the combined wastestream formula of 40 CFR 403.6(e).

2. All other users:

The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

- a. Total process flow, wastewater treatment plant flow, total plant flow or individual manufacturing process flow as specified by the Plant Manager.

The Plant Manager may accept verifiable estimates of these flows where justified by cost or feasibility considerations.

## E. Measurements of pollutants.

### 1. Categorical User:

a. The user shall identify the applicable pretreatment standards for each regulated or manufacturing process.

b. In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration (or mass), where required by the Categorical Pretreatment Standard or as specified by the Plant Manager, of regulated pollutants (including standards contained in Sections 3 through 7, as appropriate) in the discharge from each regulated or manufacturing process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations and shall conform to sampling and analytical procedures outlined in Section 26.

c. The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.

d. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e) for a categorical user covered by a categorical pretreatment standard this adjusted limit along with supporting data shall be submitted as part of the application.

### 2. All other users:

a. The user shall identify the applicable pretreatment standards for its wastewater discharge.

b. In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration (or mass) where specified by the Plant Manager, of regulated pollutants contained in Sections 3 through 7 as appropriate in the discharge. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations and shall conform to sampling and analytical procedures outlined in Section 26.

c. The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.

d. Where the Plant Manager has specified alternate concentration or mass limits because of dilution this adjusted limit along with supporting data shall be submitted as part of the application.

F. Certification. A statement, reviewed by an authorized representative of the user and certified by a qualified professional as outlined in subparagraph I of this section, indicating whether the applicable Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) and/or additional pretreatment is required for the user to meet the applicable Pretreatment Standards and Requirements;

G. Compliance Schedule. If additional pretreatment and/or O and M will be required to meet the applicable Pretreatment Standards; the shortest schedule by which the user will provide such additional pretreatment and/or O and M.

1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).

2. No increment referred to in paragraph (A) of this section shall exceed 9 months.

3. Not later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the Plant Manager including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the user to return the construction to the schedule established. In no event shall more than 9 months elapse between such progress reports.

4. Where the user's categorical Pretreatment Standard has been modified by the combined wastestream formula (40 CFR 403.6(e)), and/or a Fundamentally Different Factors variance (40 CFR 403.13)

at the time the user submits the report required by this paragraph, the information required by paragraphs (F) and (G) of this section shall pertain to the modified limits.

5. If the categorical Pretreatment Standard is modified by the combined wastestream formula (40 CFR 403.6(e)), and/or a Fundamentally Different Factors variance (40 CFR 403.13) after the user submits the report required by paragraphs (F) and (G) of this section; a new report pertaining to the modified limit shall be submitted by the user within 60 days after the modified limit is approved.

The completion date in this schedule shall not be later than the compliance date established pursuant to Section 20 of this Ordinance.

H. Any other information as may be deemed necessary by the Plant Manager to evaluate the wastewater discharge permit application.

I. All wastewater discharge permit applications and user reports must be signed by an authorized representative of the user and contain the following certification statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Incomplete or inaccurate applications will not be processed and will be returned to the user for revision.

The Plant Manager will evaluate the data furnished by the user and may require additional information. The Plant Manager will prepare a written recommendation regarding issuance or non-issuance of the permit and submit it to the Participant. Within 30 days of receipt of a complete wastewater discharge permit application, including the Plant Manager's recommendation, the Participant will determine whether or not to issue a wastewater discharge permit. Upon a determination to issue, the permit shall be issued within 30 days of full evaluation and acceptance of the data furnished. The Participant may deny any

application for a wastewater discharge permit. An Industrial User denied a discharge permit may petition the Participant to reconsider the issuance of a discharge permit as described in section 25 of this ordinance.

19. PERMIT MODIFICATIONS.

The Participant reserves the right to amend any Wastewater Discharge permit issued hereunder in order to assure compliance or continued compliance by the Participant with applicable laws and regulations. Within nine (9) months of the promulgation of a National Categorical Pretreatment Standard, but not later than the deadline for final compliance with a standard when such is specified, the Wastewater Discharge Permit of each user subject to such standards shall be revised to require compliance with such standards within the time frame prescribed by such standards.

Where a user, subject to a National Categorical Pretreatment Standard, has not previously submitted an application for a Wastewater Discharge Permit as required by section 18; the user shall apply for a Wastewater Discharge Permit from the Participant within 90 days after the promulgation of the applicable National Categorical Pretreatment Standards by the EPA. In addition, the user with an existing Wastewater Discharge Permit shall submit to the Plant Manager within 90 days after the promulgation of an applicable National Categorical Pretreatment Standard, the information required by paragraphs (C) and (H) of section 18. The user shall be informed of any proposed changes in its permit at least 30 days prior to the effective date of change. Any changes or new conditions upon the user may require modifications of the Wastewater Discharge Permit, as well as include a reasonable time schedule for compliance.

On approval by the Plant Manager, the Participant may modify a wastewater discharge permit for any good cause, including but not limited to the following:

- A. To incorporate any new or revised Federal, State, or local pretreatment standards or requirements;
- B. To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;
- C. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
- D. Information indicating that the permitted discharge poses a threat to the Participant's, the POTW's, or other personnel, or the receiving waters;
- E. Violation of any terms or conditions of the wastewater discharge permit;

F. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;

G. Revision of, or a grant of variance from, categorical pretreatment standards pursuant to 40 CFR 403.13;

H. To correct typographical or other errors in the wastewater discharge permit; or

I. To reflect a transfer of the facility ownership and/or operation to a new owner/operator.

## 20. PERMIT CONDITIONS.

Wastewater Discharge Permits for Significant Industrial Users shall specify no less than all of the following, and for Minor Industrial Users, shall specify the provisions from the following, as determined applicable by the Plant Manager:

A. Wastewater discharge permits must contain the following conditions:

1. A statement that indicates wastewater discharge permit duration, which in no event shall exceed five (5) years;
2. A statement that the wastewater discharge permits are transferable only upon compliance with section 22 of this ordinance, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;
3. Applicable pretreatment standards and requirements, including any special State requirements;
4. Self monitoring, sampling, reporting notification, submittal of technical reports, compliance schedules, and record-keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law; and
5. Requirement for immediate notification to the Plant Manager where self-monitoring results indicate non-compliance;
6. Requirement to report a by-pass or upset of a pretreatment facility;

7. Requirement for the SIU or MIU who reports non-compliance to repeat the sampling and analysis and submit results to the Plant Manager within 30 days after becoming aware of the violation;

8. A statement of applicable civil, criminal, and administrative penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule;

9. The requirement to apply AKART to all wastewaters discharged.

B. Wastewater discharge permits may contain, but need not be limited to, the following conditions:

1. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;

2. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;

3. Requirements for developing and implementing spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges;

4. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;

5. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW;

6. Requirements for installation and maintenance of inspection and sampling facilities and equipment;

7. A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards and requirements, including those which become effective during the term of the wastewater discharge permit;

8. Any special agreements developed or continued between the Participant and user with the approval of the Plant Manager;

9. Compliance schedule(s) for meeting applicable pretreatment standards and requirements. Compliance schedules shall conform

to the requirements specified in Section 18 subparts G.1. through G.3. of this ordinance.

10. Other conditions as deemed appropriate by the Plant Manager to ensure compliance with this ordinance, and State and Federal laws, rules, and regulations.

#### C. Deadline for Compliance with Applicable Pretreatment Requirements

Compliance by existing users (categorical users) covered by Categorical Pretreatment Standards shall be within 3 years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate Standard. The Plant Manager shall establish a final compliance deadline date for any existing user not covered by Categorical Pretreatment Standards or for any categorical user when the local limits for said user are more restrictive than EPA's Categorical Pretreatment Standards. New source users and new users are required to comply with applicable pretreatment standards within the shortest feasible time (not to exceed 90 days from the beginning of discharge). New sources and new users shall install and have in operating condition, and shall start-up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge. Any wastewater discharge permit issued to a categorical user shall not contain a compliance date beyond any deadline date established in EPA's Categorical Pretreatment Standards.

Any other existing user or a categorical user that must comply with a more stringent local limit, which is in non-compliance with any local limits shall be provided with a compliance schedule placed in an industrial wastewater permit to insure compliance within the shortest time feasible.

#### 21. PERMIT DURATION AND REISSUANCE.

All wastewater discharge permits shall be issued for a period of five years, subject to appendment or revocation as provided in this ordinance. Under extraordinary circumstances, a permit may be issued for a shorter period or may be stated on its face to expire on a specific date.

A user, required to have a wastewater discharge permit, shall apply for wastewater discharge permit reissuance by submitting a complete wastewater discharge permit application, in accordance with Section 18 of this ordinance, a minimum of 90 days prior to the expiration of the user's existing wastewater discharge permit. A user, whose existing wastewater discharge permit has expired and has submitted its re-application in the time period specified herein, shall be deemed to have an effective wastewater discharge permit until the Participant issues or denies the new wastewater discharge permit. A user, whose existing wastewater discharge permit has expired and who failed to

submit its re-application in the time period specified herein, will be deemed to be discharging without a wastewater discharge permit.

22. LIMITATIONS ON PERMIT TRANSFER.

This permit is automatically transferred to a new owner or operator if:

- A. A written agreement between the old and new owner or operator containing a specific date for transfer of permit responsibility, coverage, and liability is submitted to the Participant and the LOTT Industrial Waste Program Supervisor;
- B. A copy of the permit is provided to the new owner; and
- C. LOTT does not notify the Permittee of the need to modify the permit.

Unless this permit is automatically transferred according to section A above, this permit may be transferred only if it is modified to identify the new Permittee and to incorporate such other requirements as determined necessary by the Plant Manager.

23. PROPERTY RIGHTS.

The issuance of a permit shall not convey any property rights in either real or personal property, or any exclusive privileges, nor shall it authorize any invasion of personal rights nor any infringement of Federal, State or Local regulations.

24. PUBLIC NOTICE.

Public notice shall be given in accordance with Section 173-216-090 WAC. The Participant may initiate the Public Notice rather than requiring it of the user.

25. APPEAL OF PERMIT CONDITIONS.

Any person, including the user, may petition the Participant to reconsider the terms of a wastewater discharge permit within thirty (30) days of its issuance or denial.

A. Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.

B. In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit.

C. The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.

D. If the Participant fails to act within ninety (90) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit, or not to modify a wastewater discharge permit, shall be considered final administrative actions for purposes of judicial review.

E. Aggrieved parties seeking judicial review of the final administrative wastewater discharge permit decisions must do so by filing a petition with the Superior Court 10 days of final administrative action.

F. Industrial Users may request a meeting with the Plant Manager and Participant to present the petition required in this section. The Plant Manager shall arrange such a meeting within 30 days of the request by the Industrial User.

## 26. REPORTING REQUIREMENTS.

Reporting requirements specified in this section shall be inclusive of all Significant Industrial Users and shall also apply to those Minor Industrial Users as specifically required in their Waste Discharge Permits.

All reports of permittees shall contain all results of sampling and analysis of the discharge, including the flow and the nature and concentration or production and mass as specified by the Plant Manager. The frequency of monitoring by the user shall be as prescribed in the Wastewater Discharge Permit. All analyses shall be performed in accordance with 40 CFR, Part 136 and amendments thereto. Where 40 CFR, Part 136 does not include a sampling or analytical technique for the pollutant in question, sampling and analysis shall be performed in accordance with the procedures set forth in the EPA publication, "Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants", April 1977, and amendments thereto, or with any other sampling and analytical procedures approved by the Administrator of the EPA.

### A. Initial Compliance Report.

Within 90 days following the date for final compliance with Applicable Pretreatment Standards and requirements set forth in this ordinance, or following commencement of the discharge of wastewaters into the POTW, any user subject to this ordinance shall submit a report to the Plant Manager that indicates compliance with Section 18, parts D through I, of this ordinance. The report shall state whether the Applicable Pretreatment

Standards or requirements are being met on a consistent basis and, if not, what additional O & M and/or pretreatment is necessary to bring the user into compliance with the Applicable Pretreatment Standards or requirements. This statement shall be signed by an authorized representative of the user. If permit conditions are not being met, the statement also must be signed by an engineer qualified in pretreatment system design.

For users subject to equivalent mass or concentration limits developed by the Plant Manager in accordance with procedures established in 40 CFR 403.6 (c), this report shall contain a reasonable measure of the user's long term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the users's actual production during the appropriate sampling period.

#### B. Periodic Compliance Report.

Any user subject to the Pretreatment Standards set forth in this ordinance, after the compliance date of such Pretreatment Standard or, in the case of a new user, after commencement of the discharge to the POTW, shall submit to the Plant Manager during the months of May and November of each year, unless specified more frequently by the Plant Manager, a report indicating the nature and concentration of prohibited or regulated substances in the effluent which are limited by the Permit and/or Pretreatment Standards hereof. Industrial Users subject to mass limitations as provided for in this ordinance and/or the Federal Categorical Pretreatment Standards shall indicate the mass of pollutants regulated by Pretreatment Standards in the discharge from the Industrial User. For users subject to equivalent mass or concentration limits developed by the Plant Manager in accordance with procedures established in 40 CFR 403.6 (c), this report shall contain a reasonable measure of the user's long term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the users's actual production during the appropriate sampling period.

In addition, this report shall include a record of all measured or estimated average and maximum daily flows during the reporting period specified in Section 20 hereof, and if a user monitors a pollutant more frequently than specified by the Plant Manager, using the procedures prescribed in 40 CFR part 136, the results of this monitoring shall be included in the report. Flows shall be reported on the basis of actual measurement, provided however, where cost or feasibility considerations justify, the Plant

Manager may accept reports of average and maximum flows estimated by verifiable techniques. The Plant Manager, for good cause shown, considering such factors as local high or low flow rates, holidays, budget cycles, or other extenuating factors, may authorize the submission of said reports on months other than those specified above.

#### C. Notification of Significant Production Changes.

Any user operating under a wastewater discharge permit incorporating equivalent mass or concentration limits shall notify the Plant Manager within two (2) business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not providing a notice of such anticipated change will be required to comply with the existing limits contained in its wastewater discharge permit.

#### D. Hazardous Waste Notification.

Any user that is discharging 15 kilograms of hazardous wastes as defined in 40 CFR 261 (listed or characteristic wastes) in a calendar month or any facility discharging any amount of acutely hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e) is required to provide a one time notification in writing to the Plant Manager, EPA Regional Waste Management Division Plant Manager, and Hazardous Waste Division of Ecology. Any existing user exempt from this notification shall comply with the requirements contained herein within 30 days of becoming aware of a discharge of 15 kilograms of hazardous wastes in a calendar month or the discharge of acutely hazardous wastes to the LOTT sewer system. Such notification shall include:

1. The name of the hazardous waste as set forth in 40 CFR Part 261,
2. The EPA Hazardous waste number; and
3. The type of discharge (continuous, batch, or other),
4. If an industrial user discharges more than 100 kilograms of such waste per calendar month to the sewer system, the notification shall also contain the following information to the extent it is known or readily available to the industrial user:
  - a. an identification of the hazardous constituents contained in the wastes,

b. an estimation of the mass and concentration of such constituents in the wastestreams discharged during that calendar month, and

c. an estimation of the mass of constituents in the wastestreams expected to be discharged during the following 12 months.

These notification requirements do not apply to pollutants already reported under the self-monitoring requirements. Whenever the EPA publishes final rules identifying additional hazardous wastes or new characteristics of hazardous waste, a user shall notify the Plant Manager of the discharge of such a substance within 90 days of the effective date of such regulations. In the case of any notification made under this paragraph, an industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

E. Notice of potential problems, including accidental spills and/or slug loadings.

Any user shall notify the Plant Manager immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined in Section 2. The notification shall include the concentration and volume and corrective action. Steps being taken to reduce any adverse impact should also be noted during the notification. Any user who discharges a slug (or slugs) of pollutants shall be liable for any expense, loss, or damage to the POTW, in addition to the amount of any fines imposed on the Participant or Plant Manager under State or Federal law.

F. Notification of Changed Discharge.

All users shall promptly notify the Plant Manager in advance of any substantial change in the volume or character of pollutants in their discharge, including significant manufacturing process changes, pretreatment modifications, and the listed or characteristic hazardous wastes for which the user has submitted initial notification under 40 CFR 403.12(p).

G. Users subject to equivalent mass or concentration limits.

For users subject to equivalent mass or concentration limits developed by the Plant Manager in accordance with procedures established in 40 CFR 403.6 (c), this report shall contain a reasonable measure of the user's long term production rate. For all other users subject to categorical

pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the users's actual production during the appropriate sampling period.

#### H. Non-Compliance Reporting.

If sampling performed by a user indicates a violation, the user shall notify the Plant Manager within 24 hours of becoming aware of the violation. The user shall also repeat the sampling within 5 days and submit the results of the report analysis to the Plant Manager within 30 days after becoming aware of the violation, except the user is not required to resample if:

1. The Plant Manager performs sampling at the user at a frequency of at least once per month, or
2. The Plant Manager performs sampling at the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.

#### I. TTO Reporting.

Categorical users which are required by EPA to eliminate and/or reduce the levels of toxic organics (TTO's) discharged into the sewer system must follow the Categorical Pretreatment Standards for that industry. Those users must also meet the following three requirements:

1. Sample, as part of the application requirements, for all the organics listed under the TTO limit (no exceptions);
2. Either: routinely monitor for TTOs, (as specified in permit conditions), certify that no Toxic Organics are used at the facility, or develop a solvent management plan in lieu of required TTO monitoring;
3. Include a certification statement in self-monitoring reports that there has been no dumping of concentrated toxic organics into the wastewater and that it is implementing a solvent management plan as approved by the Plant Manager.

#### J. Reports from Minor Industrial Users.

Minor Industrial Users shall provide appropriate reports as the Plant Manager may require.

#### K. Reports for Unpermitted Users.

The Plant Manager may require non-domestic users which are otherwise not required to obtain a wastewater discharge permit or authorization to provide appropriate reports and complete Industrial User survey forms as necessary to properly implement the pretreatment program.

#### L. Sampling Requirements for Users.

A minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. The Plant Manager will determine on a case-by-case basis whether the user will be able to composite the individual grab samples. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques where feasible.

The Plant Manager may waive flow-proportional composite sampling for any user that demonstrates that flow-proportional is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged.

Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated or manufacturing process if no pretreatment exists or as determined by the Plant Manager and contained in the user's wastewater discharge permit. For categorical users, if other wastewaters are mixed with the regulated wastewater prior to pretreatment the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula of 40 CFR 403.6(e) in order to evaluate compliance with the Applicable Categorical Pretreatment Standards. For other SIUs, for which the Plant Manager has adjusted discharge limitations to factor out dilution flows, the user should measure the flows and concentrations necessary to evaluate compliance with the adjusted pretreatment standard(s).

All sample results shall indicate the time, date and place of sampling and methods of analysis and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges from the user. If a user sampled and analyzed more frequently than was required in its wastewater discharge permit, using methodologies in 40 CFR Part 136, it must submit all results of sampling and analysis of the discharge as part of its self-monitoring report.

27. CONFIDENTIAL INFORMATION.

Information and data furnished to the Plant Manager and/or Participant with respect to the nature and frequency of discharge shall be available without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the Plant Manager and/or Participant that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets or proprietary information of the user under the laws or regulations of the State or Federal Government. If a user furnishing a report requests that information provided as part of a report or permit process be kept confidential, and the user marks said pages as confidential, then the portions of a report or other information which may disclose trade secrets or secret processes protected by State or Federal law shall not be made available for inspection by the public, subject to the provisions of RCW chapter 42.17, but shall be made available upon written request to governmental agencies for uses related to this ordinance, the National Pollutant Discharge Elimination System (NPDES) Permit, State Disposal System Permit and/or the Pretreatment Program; provided however that such portions of a report or other information shall be available for use by the State or any State Agency in judicial review or enforcement proceedings involving the user furnishing the report. Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction.

Information accepted by the Plant Manager and/or Participant as confidential, shall not be transmitted to any governmental agency or to the general public by the Plant Manager and/or Participant until and unless a ten-day notification is given to the user. Once notice of intent to release information has been given to the user, if the user fails to contest the release, then any rights created by this section shall be deemed to have been waived.

28. BYPASS.

A. For the purposes of this section;

1. "Bypass" means the intentional diversion of wastestreams from any portion of a user's treatment facility.
2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

B. A user may allow any bypass to occur which does not cause applicable pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (C) and (D) of this section.

C. 1. If a user knows in advance of the need for a bypass, it shall submit prior notice to the Plant Manager, at least ten (10) days before the date of the bypass, if possible.

2. A user shall submit oral notice to the Plant Manager of an unanticipated bypass that exceeds applicable pretreatment standards within twenty four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Plant Manager may waive the written report on a case-by-case basis if the oral report has been received within twenty four (24) hours.

D. 1. Bypass is prohibited, and the Participant may take an enforcement action against a user for a bypass, unless:

a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

c. The user submitted notices as required under paragraph (C) of this section.

2. The Participant may approve an anticipated bypass, after considering its adverse effects, if the Plant Manager determines that it will meet the three conditions listed in paragraph (D)(1) of this section.

29. EMERGENCY SUSPENSION OF SERVICE AND PERMIT.

The Participant may order the suspension of wastewater treatment service and of the Discharge Permit of a user without advance notice if it appears to the Plant Manager and/or Participant that an actual or potential discharge:

- A. Presents or threatens a substantial danger to the health or welfare of persons or to the environment; or,
- B. Threatens to interfere with the operation of the POTW or to violate any pretreatment limits imposed by this chapter or by any Discharge Permit issued pursuant to this ordinance.

Any user notified of the Participant's suspension order shall cease immediately all discharges.

Any user whose permit has been suspended pursuant to this section shall have the right to a post-suspension hearing to be conducted in accordance with the procedures set forth in Section 36. The Participant shall reinstate the Discharge Permit and wastewater treatment services upon proof by the user of the elimination of the risk of actual or potential discharge, unless the Participant has commenced proceedings for service termination and permit revocation pursuant to Section 30.

In addition to all other rights and remedies, the Participant shall have the authority to physically cap, block, or seal the side sewer line at its juncture with the sewer line or elsewhere (whether on public or private property) if the Plant Manager determines that such action is reasonably necessary to suspend service as authorized by this section. The Participant shall have the right of access onto the user's private property to accomplish such capping, blocking, or sealing of the sewer line.

If the Participant has invoked an emergency suspension of service, the user must file a written report to the Plant Manager, describing the causes of the harmful contribution, and the measures taken to prevent any future occurrence. This report is required before service can resume.

30. TERMINATION OF TREATMENT SERVICES, PERMIT REVOCATION.

The Participant shall have authority to terminate wastewater treatment services and to revoke the discharge permit of any user if it determines that the user has:

- A. Failed to accurately report wastewater constituents and characteristics;

- B. Failed to report significant changes in wastewater constituents, volume, characteristics, or user operations;
- C. Refused reasonable access to the user's premises for purposes of inspection, sampling, or monitoring;
- D. Violated conditions of the wastewater discharge permit;
- E. Violated any of the provisions of this ordinance or regulations promulgated thereunder; or
- F. Violated any lawful order of the Participant issued with respect to the user's permit or this ordinance.

The user shall be given written notice of the Participant's decision (and basis or bases therefore) to terminate wastewater services and shall have the right to a pre-termination hearing in accordance with the provisions of Section 36.

#### 31. NOTIFICATION OF VIOLATION.

When the Plant Manager finds that a user has violated (or continues to violate) any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Participant may serve upon that user a written Notice of Violation, via certified letter. Within ten (10) days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the Plant Manager. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the Participant to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

#### 32. CONSENT ORDERS.

The Participant may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for non-compliance. Such documents will include specific action to be taken by the user to correct the non-compliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 33 and 34 of this ordinance and shall be judicially enforceable. Use of a Consent Order shall not be a bar against, or prerequisite for, taking any other action against the user.

### 33. COMPLIANCE SCHEDULE ORDER.

When the Plant Manager finds that a user has violated or continues to violate any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Participant may issue an order to the user responsible for the discharge describing the nature of the violation; directing that the user come into compliance within a time specified in the order; and describing the method of appeal. The order shall be served by personal service or by mail to the user's last known address.

If the user does not come into compliance within the time specified in the order, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders may also contain other requirements to address the non-compliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user. Compliance schedules shall conform to the requirements specified in Section 18 subparts G.1. through G.3. of this ordinance.

### 34. CEASE AND DESIST ORDERS.

When the Plant Manager finds that a user has violated (or continues to violate) any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the Participant may issue an order to the user directing it to cease and desist all such violations and directing the user to:

A. Immediately comply with all requirements; and

B. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

### 35. ADMINISTRATIVE FINES.

A. When the Plant Manager finds that a user has violated or continues to violate any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or

requirement, the Participant may fine such user in an amount not to exceed \$10,000. Such fines shall be assessed on a per violation, per day basis. In the case of monthly or other long term average discharge limits, fines shall be assessed for each day during the period of violation.

B. Unpaid charges, fines, and penalties shall, after thirty (30) calendar days, be assessed an additional penalty of fifteen percent (15%) of the unpaid balance, and interest shall accrue thereafter at a rate of ten percent (10%) per month. A lien against the user's property will be sought for unpaid charges, fines, and penalties.

C. Users desiring to dispute such fines must file a written request for the Participant to reconsider the fine along with full payment of the fine amount within fifteen (15) days of being notified of the fine. Where a request has merit, the Participant, in conjunction with the Plant Manager shall convene a hearing on the matter within fifteen (15) days of receiving the request from the user. In the event the user's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user. The Participant may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

D. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.

### 36. ADMINISTRATIVE HEARING.

A. A user shall have the right to an administrative hearing to contest the Participant's determination:

1. To impose an enforcement action provided for by this ordinance;
2. That the user has violated a compliance schedule order.

B. Any hearing pursuant to this section must be requested by the user in writing within fifteen (15) business days after the user receives notice of the Participant's decision. The user's written request for hearing shall be filed with the Plant Manager.

The LOTT Technical Sub-Committee (TSC) shall conduct the hearing within fifteen (15) business days of the receipt of the request (or within five (5) business days if the user is contesting suspension of wastewater services and discharge permit.)

C. The administrative hearing authorized by this section shall be held before the TSC. Formal rules of evidence shall not apply but the user and the Participant shall have the right to present witnesses and other evidence. The TSC shall issue a written decision within fourteen (14) business days of the conclusion of the hearing.

D. Any user requesting a hearing shall have the right to make an electronic or stenographic record of the proceedings. Such record shall be made at the user's expense.

E. The TSC may by resolution or ordinance adopt additional rules for the conduct of hearings pursuant to this section.

F. The TSC shall serve notice, to the person requesting the hearing, of the meeting personally or by registered or certified mail (return receipt requested) at least five (5) days prior to the hearing. Such notice may be served on any authorized representative of the user.

G. The decision of the TSC shall be final.

### 37. INJUNCTIVE RELIEF.

When the Plant Manager finds that a user has violated (or continues to violate) any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the Participant may petition the Superior Court for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this ordinance on activities of the user. The Participant may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

### 38. CIVIL PENALTIES.

A. A user which has violated or continues to violate any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the Participant for a maximum civil penalty of \$10,000 per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

B. The Participant may recover reasonable attorneys fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the POTW and/or the Participant.

C. In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including but not limited to, the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.

D. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.

### 39. JUDICIAL REVIEW.

Any final administrative decision of the Participant rendered pursuant to this Ordinance may be reviewed only by the Superior Court. The review shall be initiated by a petition filed by the Industrial User. Such review shall be timely and shall be filed no later than ten (10) business days after the Participant has provided notice of the decision.

### 40. ANNUAL PUBLICATION OF ENFORCEMENT ACTIONS.

The Participant shall publish annually, in the largest daily newspaper published in the municipality where the POTW is located, a list of the users which, during the previous twelve (12) months, were in significant non-compliance with applicable pretreatment standards and requirements. The term significant non-compliance shall mean:

A. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of wastewater measurements taken during a six (6) month period exceed the daily maximum limit or average limit for the same pollutant parameter by any amount;

B. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six (6) month period equals or exceeds the product of the daily maximum limit or the average limit multiplied by the applicable criteria [1.4 for BOD, TSS, FOG, and 1.2 for all other pollutants except pH];

C. Any other discharge violation that the Plant Manager believes has caused alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

D. Any discharge of pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in the Plant Manager or Participant's exercise of its emergency authority to halt or prevent such a discharge;

E. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

F. Failure to provide within thirty (30) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

G. Failure to accurately report non-compliance; or

H. Any other violation(s) which the Plant Manager or Participant determines will adversely affect the operation or implementation of the local pretreatment program.

#### 41. RIGHT TO WRITTEN INTERPRETATION OF CHAPTER.

Any user or any interested party shall have the right to request an interpretation or ruling by the Participant on any matter covered by this ordinance. The request must be in writing and must be addressed to the Participant. The Plant Manager and/or Participant shall provide a prompt written response. A request pursuant to this section shall not stay or otherwise affect enforcement proceedings.

#### 42. OPERATING UPSETS.

For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary non-compliance with applicable pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include non-compliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

A. Reporting Requirements: The user will immediately inform the Plant Manager of an upset and submit the following information to the Plant Manager within five (5) days:

1. A description of the indirect discharge and cause of non-compliance;
2. The period of non-compliance, including exact dates and times or, if not corrected, the anticipated time the non-compliance is expected to continue;
3. Steps being taken and/or planned to reduce, eliminate, and prevent the recurrence of the non-compliance.

B. Required Actions: users shall control production of all discharges to the extent necessary to maintain compliance with applicable pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

C. Affirmative Defense: an upset shall constitute an affirmative defense to an action brought for non-compliance with applicable pretreatment standards if the user can demonstrate through properly signed, contemporaneous operation logs, or other relevant evidence that:

1. An upset occurred and the user can identify the cause(s) of the upset;
2. The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
3. The user has complied with the reporting requirements of "A" (above).

D. Burden of Proof: In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.

E. Defense applies only to enforcement actions: Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for non-compliance with applicable pretreatment standards. Such defense shall not relieve the user of any liability for the upset, including liability for damages to the POTW, the Participant, or third persons.

43. RECORDS RETENTION.

All users subject to this ordinance shall retain and preserve for no less than three (3) years, any records, books, documents, memoranda, reports, correspondence and any and all summaries thereof, relating to monitoring, sampling and chemical analyses made by or in behalf of a user in connection with its discharge. Records shall include the date, exact place, method, and time of sampling; the name of the persons taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analysis. All records which pertain to matters which are the subject of an enforcement action or litigation shall be retained and preserved by the user until all enforcement activities have concluded and all periods of limitation with respect to any and all appeals have expired.

44. REGULATIONS AND RIGHT OF REVISION.

The Plant Manager shall propose, subject to approval and adoption by the Participant, additional regulations consistent with this ordinance when necessary to reflect changes in applicable State and/or Federal regulations.

The Participant reserves the right to amend this ordinance and any permits it issues under it in a manner consistent with Section 4 of the Intergovernmental Agreement for Industrial Waste Pretreatment Program to provide for more stringent limitations or requirements on discharges to the POTW if such amendments are deemed necessary to comply with the objectives set forth in this ordinance, or are otherwise in the public interest. No vested right shall be created by the issuance of any permit under this ordinance.

45. RECOVERY OF COSTS INCURRED BY THE PARTICIPANT.

Any user violating any of the provisions of this ordinance who discharges or causes a discharge producing a deposit or obstruction or causes damage to or impairs the POTW shall be liable to the Participant for any reasonable expense, loss, fines or damage caused by such violation or discharge. The Participant shall bill the user for the cost incurred by the Participant for any cleaning, repair, replacement work, or other damages caused by the violation or discharge. Refusal to pay the assessed costs shall constitute a violation of this ordinance enforceable under the provisions of Part 35 of this ordinance.

46. CRIMINAL PROSECUTION.

A. A user which has willfully or negligently violated any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than \$10,000 per violation per day, or imprisonment for not more than one (1) year, or both.

B. A user which has willfully or negligently introduced any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a penalty of not more than \$10,000 and/or be subject to imprisonment for one (1) year. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.

C. A user which knowingly made any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to maintained, pursuant to this ordinance, wastewater discharge permit, or order issued hereunder, or who falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under this ordinance shall, upon conviction, be punished by a fine of not more that \$10,000 per violation per day, or imprisonment for not more than one (1) year, or both.

47. REMEDIES NON-EXCLUSIVE.

The provisions in Sections 29 through 38 and sections 45 and 46 of this ordinance are not exclusive remedies. The Participant reserves the right to take any, all, or any combination of these actions against a non-compliant user. Enforcement of pretreatment violations will generally be in accordance with the enforcement response plan provided by the Plant Manager. However, the Participant reserves the right to take other action against any user when the circumstances warrant. Subject to constitutional provisions relating to double jeopardy, the Participant is empowered to take more than one enforcement action against any non-compliant user. These actions may be taken concurrently.

48. STATE REQUIREMENTS.

State requirements and limitations on discharges to the POTW shall be met by all users which are subject to such standards in any instance in which they are more

stringent than federal requirements and limitations, or those in this ordinance or other applicable ordinance.

49. SEVERABILITY.

If any provision, paragraph, word, section or article of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, and chapters shall not be affected and shall continue in full force and effect.

50. CONFLICT.

All other previously issued ordinances and parts of other ordinances inconsistent or conflicting with any part of this ordinance are hereby repealed to the extent of such inconsistency or conflict.

51. EFFECTIVE DATE.

This ordinance shall be in full force and effect immediately following its passage, approval, and publication, as provided by law.

Introduced the \_\_\_\_ day of \_\_\_\_, 199 .  
First reading: \_\_\_\_ day of \_\_\_\_, 199 .  
Second Reading: \_\_\_\_ day of \_\_\_\_, 199 .  
Passed this \_\_\_\_ day of \_\_\_\_, 199 .  
Ayes:  
Nays:  
Absent:  
Not Voting:  
Approved by me this \_\_ day of \_\_\_\_, 199 .

[insert appropriate City official]

Attest:  
[City] Clerk

Published:  
[Publication Date]

## **Exhibit H**

### **OPERATIONS AND MAINTENANCE AGREEMENT**

by and between

#### **The City of Olympia and the LOTT Alliance**

THIS OPERATIONS AND MAINTENANCE AGREEMENT (“O&M Agreement”), dated \_\_\_\_\_, 2000, is entered into by and between the City of Olympia (“Olympia”), a Washington municipal corporation, and the LOTT Wastewater Alliance (“LOTT”), a nonprofit corporation formed and existing under Chapters 24.03 and 39.34 RCW. The parties are herein individually referred to as “Party” and collectively as the “Parties.”

#### Recitals

WHEREAS, prior to the creation of the LOTT Alliance, Olympia had acted on behalf of the LOTT Partners as the lead agency for certain joint facilities, which involved owning, operating and maintaining such facilities; and

WHEREAS, each year since 1976, Olympia presented the LOTT Advisory Committee with a proposed budget which projected expenses for the operation and maintenance of the facilities, and consistently accepted the Advisory Committee’s recommendations in its formal adoption of the budget; and

WHEREAS, with the execution of the Interlocal Cooperation Act Agreement, the LOTT Alliance has been created and will upon Consolidation take ownership of all Joint Facilities formerly owned by the individual partners;

WHEREAS, the LOTT Alliance and Olympia desire that Olympia continue to operate those facilities which it has been operating, using competent staff, following similar procedures, meeting the same standards of performance, and using similar budgeting methods as having prevailed in the past, except that the Parties desire that Olympia’s responsibilities be established through an operations and maintenance agreement entered directly between Olympia and the LOTT Alliance as the new owner of the facilities; and

**1. Purpose.**

The City of Olympia, a municipal corporation of the State of Washington, and the LOTT Alliance, a Washington nonprofit corporation formed and existing under Chapters 24.03 and 39.34 RCW owned jointly by the Cities of Lacey, Olympia, and Tumwater and Thurston County, enter this Operations and Maintenance Agreement (“O&M Agreement”) to provide contractual terms for Olympia’s operation Joint Facilities owned by the LOTT Alliance.

**2. Effective Date.**

This O&M Agreement shall take effect on the date when Consolidation occurs pursuant to the Interlocal Cooperation Act Agreement (“Effective Date”).

**3. Term**

Unless terminated for a cause pursuant to Section 13 below, the O&M Agreement shall remain in force until one year after written notice of termination is executed and delivered by either party. Prior to the LOTT Alliance giving such notice, the LOTT Alliance shall prepare a study of operating costs and practices of Olympia and alternatives in its operations of the Facilities. If such termination occurs, the LOTT Alliance will provide for an orderly, smooth transition which fairly takes into account the effect on Olympia’s employees.

**4. Joint Facilities; Future Joint Facilities.**

For the purpose of this Agreement, “Joint Facilities” shall mean all “existing Joint Facilities” described in Exhibit B to the Interlocal Cooperation Act Agreement For Wastewater Management By the LOTT Wastewater Alliance. Future Joint Facilities shall include any facilities hereafter constructed or acquired by the LOTT Alliance.

**5. Joint Facility Operation and Maintenance Services.**

Olympia shall, at the Effective Date, assume responsibility for control, security, maintenance and operational performance of the Joint Facilities on a twenty-four hour per day, seven day per week basis. Olympia shall have operations and maintenance oversight authority over future Joint Facilities to the extent necessary to perform its obligations under this section.

- a) **Compliance with Law; General Standards.** Olympia shall operate and maintain the Facilities in compliance with all applicable federal, state, and local laws, regulations, and ordinances, and in compliance with any orders or permits under which the Facilities operate. Olympia’s operation and maintenance of the Joint Facilities shall conform to generally accepted industry principles and practices and the Treatment Plant’s and other facilities’ design capacity and capability, producing treated wastewater in full compliance with the NPDES permit requirements of the Environmental Protection Agency. Olympia shall also perform in accord with the Operation and Maintenance Manual established under WAC 173-240-080, the Department of Ecology “Orange Book,” the Water

Environment Federation Manual of Practice, the Water Quality Laboratory Quality Assurance Manual, Water Quality Laboratory Standards of Practice Approved by the Department of Ecology, Water Environment Federation Standard Methods for Analysis of Water and Wastewater, Pretreatment Operation Manual as Approved by the Department of Ecology, and other applicable technical reference manuals that are pertinent to the operation of the LOTT Joint Facilities.

**b) Regulatory Agency Relations.** As operator of the Joint Facilities, Olympia shall work cooperatively with all regulatory agencies with jurisdiction over the Facilities to assure:

- Compliance with all permits and licenses
- Continued satisfaction of laboratory accreditation standards
- Conformance with personnel, practices, and equipment safety requirements
- Completion of all testing and certification required to assure safe Facility operations and environment
- That biosolids produced by the Facility are handled and utilized in compliance with law and applicable permits
- That the Facility meets all applicable air quality standards

**c) Personnel.** Olympia shall maintain an appropriately-sized workforce using qualified employees who have appropriate training, skill and, where required by law, appropriate certifications. Olympia shall further assure that employees are skilled and knowledgeable in their assigned duties.

**d) Planning.** Olympia shall look to future needs and submit plans to assure continuous and reliable performance of all Facility processes, in such a manner as to respond to and remain in compliance with changing regulations and other requirements.

**e) Insurance.** Olympia shall maintain during the life of this O&M Agreement Public Liability and General Liability Insurance in amounts deemed appropriate by the Alliance. The City of Olympia is a member of the Washington Cities Insurance Authority (WCIA) and this membership shall constitute adequate insurance coverage by Olympia for this Section. Olympia shall also maintain Worker's Compensation as required by state and federal law. The LOTT Alliance shall be responsible for providing fire and other property damage insurance to cover the Joint Facilities and equipment, vehicles, tools, and other property associated therewith.

**f) Reporting.** Olympia shall provide in a timely manner all necessary reporting functions to regulatory agencies and others as necessary in the operation of the facilities. These reports shall include, but not be limited to:

- NPDES Reports
- Lab Accreditation Reports
- Pretreatment Reports
- Annual Budget Requests
- Monthly operations report submitted to the LOTT Alliance by the 15th of the following month, including data reported under the NPDES permit, overview of statement of operation and any significant events.

**g) Emergency Response.** Olympia shall maintain in place emergency response plans for all major disasters and plans for restoration of Joint Facility processes following the disaster, including:

- Plans for continuous operations during a disaster
- Recovery following a disaster
- Community information

**h) Industrial Pretreatment.** Olympia shall administer a pretreatment program in accordance with authority delegated from the Department of Ecology in accordance with applicable pretreatment ordinances, and the Department of Ecology approved operations manual or pretreatment programs. In addition, Olympia shall:

- Provide an annual report to the LOTT Alliance
- Provide a permitting system for major and minor industrial dischargers
- Regularly inspect and communicate with industrial dischargers
- Enforce the pretreatment ordinance in concert with the applicable LOTT Partner in accord with the Interlocal Cooperation Act Agreement for Wastewater Management by the LOTT Wastewater Alliance

## **6. Permitting Responsibilities.**

The LOTT Alliance will maintain and hold the NPDES Permit, permits for sludge management and any applicable air emission permits. Olympia shall cooperate with the LOTT Alliance in preparing information to apply for, amend, renew, or demonstrate compliance under such permits. Because the costs necessary to comply with any modifications in such permits cannot be determined, the LOTT Alliance shall approve requested amendments to Olympia's budget for the reasonable costs of complying with changed or new permit conditions.

## **7. Budget.**

The LOTT Alliance shall pay the costs incurred by Olympia in the performance of this O&M Agreement to the extent that such costs conform with a budget for responsibilities approved in advance by the LOTT Alliance in accordance with the following process. The year 2000 budget shall be that budget already adopted for that year by the City of Olympia on behalf of LOTT. On or before May 1 of each year preceding a new budget year, Olympia shall prepare a proposed budget including all costs and expenses anticipated to be incurred in the performance of its duties in the following calendar year. The proposed budget shall be in substantially the same form as Olympia's 2000 budget with respect to operation and maintenance of Joint Facilities. The budget shall include overhead costs in accordance with practices used prior to the effective date of this Agreement. The LOTT Alliance shall consider the proposed budget in good faith in accordance with the procedures for budgeting set forth in Section 3.7 of the Interlocal Cooperation Act Agreement for Wastewater Management by the LOTT Wastewater Alliance and shall, no later than August 31, approve a budget for the following calendar year to reasonably fund the services required herein. If Olympia objects to the budget as approved by the LOTT Alliance, it shall notify the LOTT Alliance within ten (10) days after the passage of such budget. Any such disputes shall be resolved pursuant to the provisions of Section 14 of this Agreement and such resolution shall occur prior to the commencement of the budget year in question.

Once approved, the Budget ("Budget" shall mean an approved budget) shall be the maximum compensation available to Olympia for its services under this O&M Agreement. Olympia may request and the LOTT Alliance shall consider and in good faith approve modifications at any time. Any unspent and uncommitted funds held by Olympia at the end of the budget year shall be carried over to the following budget year.

## **8. Payment.**

City of Olympia shall receive from the LOTT Alliance as soon as practical, not to exceed thirty (30) days after the Effective Date of this O&M Agreement \$750,000 as an advance for payment of services under this Agreement. This amount may be modified by agreement of the parties. The City of Olympia shall place these funds in a Fund which is separate from assets of the City of Olympia. The City of Olympia shall invest advanced funds and credit any net earnings from those investments to the Fund into which the advance was placed. The City of Olympia shall not use these funds for any purpose not associated with this Agreement. From time to time, the City of Olympia shall notify the LOTT Alliance of the use of these funds, (hereafter referred to as the "reimbursement amount"). Upon such notification, the LOTT Alliance shall pay to the City of Olympia the reimbursement amount, so as to replenish the Fund to the advance amount. The reimbursement amount shall be the amount of costs paid from the advance since the previous reimbursement notification less net earnings on investments posted to the Fund into which the advance was placed since the previous reimbursement notification.

Replenishment of the advance shall be made within ten (10) business days after a request is made by the City of Olympia. If the LOTT Alliance disputes the reimbursement amount

requested by the City of Olympia, it shall pay the reimbursement amount and notify the City of Olympia of the amount disputed. If the City of Olympia agrees with the disputed amount, it shall adjust the next reimbursement request. If the City of Olympia and the LOTT Alliance do not agree upon any disputed amount to be adjusted, the dispute resolution process defined in this Agreement shall be utilized. Any advance sums remaining in the Fund upon the termination of this Agreement shall be paid to the LOTT Alliance together with any interest earned upon such sums.

## **9. Payment by Alliance for Capital Expenditures by Olympia.**

A. Capital expenditures shall not be included within the scope of this Agreement as operation and maintenance costs. Capital expenditures will be made by Olympia only after approval and funding by the LOTT Alliance. If such expenditures are urgently necessary to continue operation of any or all of the Joint Facilities in order to provide for public safety and environmental protection, Olympia shall make such emergency expenditures and make every effort to immediately seek and gain approval of these expenditures from the LOTT Alliance. The LOTT Alliance will reimburse Olympia for these emergency capital expenditures so long as Olympia has acted in good faith in making the expenditures. Reimbursement will be made within thirty (30) days of notification by Olympia. Capital expenditures, except for emergency capital expenditures, shall not be considered part of this Agreement and shall be funded by the LOTT Alliance. The term “capital expenditures” shall be defined as any expenditure for: 1) the purchase of new equipment or Joint Facility items that cost more than \$5,000 and have a lifetime span of two (2) years or more; or 2) major repairs which significantly extend equipment or facility service life and cost more than \$5,000.

Purchases or repairs, except emergency expenditures, which fall below the amounts and life span above shall be considered part of the Operation and Maintenance Budget per Section 7 above.

B. Starting with the first Budget under this Agreement and for each subsequent year hereafter, Olympia shall prepare and propose for LOTT Alliance review and approval annual and six-year capital improvement plans identifying major repairs and capital expenditures that will be necessary for then existing Joint Facilities and to restore, maintain, replace, or upgrade the equipment for efficiency, safety, function, and/or compliance with current and anticipated regulatory requirements. Odor control, noise control, reduction of visual impacts and lighting impacts should be addressed. The Alliance shall make funding provisions for approved major repairs and capital expenditures and shall provide the ways and means for construction of same. The provisions of the paragraph shall not apply to planning by the LOTT Alliance for the construction or acquisition of Joint Facilities in the future.

C. Additional operation and maintenance costs resulting from new capital facilities shall be included in the budget approved for this Agreement by the LOTT Alliance. The amount of additional operation and maintenance costs for Joint Facility items that go on-line in the middle of a budget year shall be negotiated in good faith between Olympia and the LOTT Alliance.

## **10. Rolling Stock and Equipment.**

Within the LOTT budget of this Agreement, Olympia shall pay for equipment rental of all rolling stock and equipment used for operation and maintenance of Joint Facilities. In the event Olympia's role under this Agreement is terminated, Olympia shall pay LOTT any depreciation reserves maintained for such rolling stock and equipment and shall convey without cost the applicable rolling stock and equipment to LOTT.

**11. Contracts for Goods and Services.**

Olympia shall in its own capacity and not as agent for the LOTT Alliance enter into contracts for the purchase and disposal of goods and for the performance of services as may be necessary to perform Olympia's obligations under this O&M Agreement, provided, however, that the LOTT Alliance shall enter into and maintain directly contracts relating to capital expenditures and major repairs discussed in Section 9 above. Any contracts entered into/by Olympia pursuant to this O&M Agreement for work or goods relating to the Joint Facilities shall be made expressly assignable to the LOTT Alliance, without restriction or condition of any kind, and Olympia shall, at the LOTT Alliance's request, assign such contracts to the LOTT Alliance at the termination of this O&M Agreement.

**12. Notices; Authorized Representatives.**

All notices shall be in writing and delivered in person or transmitted by certified mail, return receipt requested, postage prepaid. Notices required to be given to the City of Olympia shall be given to the City Manager or his/her designee.

Notices required to be given to the LOTT Alliance shall be given to the LOTT Alliance Board Chair or his or her designee.

**13. Termination for Cause.**

Either party may terminate the O&M Agreement upon material breach by the other party providing that the terminating party first provides written notice of such breach to the other party and such breach has not been corrected within a forty-five day cure period. By mutual agreement by the Parties, the forty-five day cure period may be extended where the situation warrants.

**14. Force Majeure.**

If a Party is rendered unable by Force Majeure to carry out, in whole or part, its obligations under this Agreement and such Party gives notice and full details of the event to the other Party as soon as practicable after occurrence, then during the pendency of such Force Majeure but for no longer period, the obligations of the Party affected by the event (other than the obligation to make payments due for performance prior to the event) shall be suspended to the extent required. The Party claiming Force Majeure shall remedy the Force Majeure as soon as possible.

**15. Disputes.**

Any disputes under this Agreement shall be resolved by negotiation, if possible. If impasse is reached, the Parties shall employ a panel with three arbitrators, one appointed by each party and the third by the two appointed arbitrators, to resolve the dispute. The ruling of the panel shall be binding, subject to judicial review under an arbitrary and capricious standard.

**16. Access to Facilities.**

LOTT Alliance staff shall have access to the Joint Facilities at all times but shall be required to first sign in at the entrance.

**17. Independent Contractor.**

The relationship of Olympia to the LOTT Alliance created by this O&M Agreement is that of an independent contractor, and none of Olympia's employees or agents shall be considered employees of the LOTT Alliance.

**18. Non-Waiver.**

The failure on the part of either party to enforce its right as to any provision of the Agreement shall not be construed as a waiver of its rights to enforce such provision in the future.

**19. No Third Party Beneficiaries.**

Except as expressly provided herein, this Agreement is not intended to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein.

**20. Governing Law.**

This O&M Agreement shall be governed by the laws of the State of Washington.

**21. Assignment.**

This O&M Agreement shall inure to the benefit of, and shall bind, the respective successors and assigns of the Parties; provided, however, that neither Party shall assign this O&M Agreement without first obtaining the other Party's written consent, which shall not be unreasonably withheld.

**22. Severability.**

If one or more clauses, sections, or provision of this Agreement is held to be unlawful, invalid or unenforceable by any court with jurisdiction, the remainder of this Agreement shall not be affected thereby.

**23. Modifications in Writing.**

Except as expressly provided in this Agreement, no amendment or modification of this Agreement shall be effective unless made in writing and executed by all Parties.

IN WITNESS WHEREOF, the Parties have caused this O&M Agreement to be executed in their respective names and in their respective behalf, and have caused their respective names to be subscribed and affixed by their respective duly and legally elected and authorized officers, who are authorized to execute this O&M Agreement this \_\_\_\_\_ day of \_\_\_\_\_,

CITY OF OLYMPIA

LOTT WASTEWATER ALLIANCE

By:

By:

\_\_\_\_\_  
Its:

\_\_\_\_\_  
Its:

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Date:

ATTEST:

ATTEST:

By:

By:

\_\_\_\_\_  
Approved as to form:

\_\_\_\_\_  
Approved as to form:

\_\_\_\_\_  
Legal Counsel

\_\_\_\_\_  
Legal Council

moe9319c  
1/14/00

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**Exhibit I**  
**Agreement**  
**Regarding Additional LOTT Joint Facilities**

This Agreement, dated -----June 21-----, 1999, is entered into by and between the City of Olympia (“Olympia”), the City of Lacey (“Lacey”), the City of Tumwater (“Tumwater”), and Thurston County (the “County”), all of which are municipal corporations organized under the laws of the State of Washington and are herein collectively referred to as the “LOTT Partners.”

**WHEREAS**, the LOTT Partners entered into the Intergovernmental Contract for Wastewater Facilities Management of November, 1976, and

**WHEREAS**, that agreement provides that when The Advisory Committee deems it desirable and the LOTT Partners agree in writing that additional wastewater facilities be acquired or added, those facilities may become LOTT Joint Facilities, and

**WHEREAS**, as a result of several years of planning and deliberation, The Advisory Committee recommends the designation of existing City of Lacey facilities as LOTT Joint Facilities and LOTT’s construction of certain new facilities as LOTT Joint Facilities to prepare for expected future additions to the LOTT system and assure reliable management of existing wastewater flows in a manner consistent with the requirements of the Washington State Department of Ecology, and

**WHEREAS**, the facilities to be acquired from the City of Lacey were originally designed and constructed to be LOTT Joint Facilities and are integral to plans for future LOTT wastewater treatment, and

**WHEREAS**, the facilities to be constructed by LOTT as Joint Facilities are necessary to carry existing and future City of Tumwater and City of Olympia wastewater flows to Joint Facilities transmission and treatment structures, now

**THEREFORE, IT IS AGREED** by the LOTT Partners that the City of Lacey gravity sewer running west along Martin Way from Marvin Road to the City of Lacey Martin Village

Pump Station, the Martin Village Pump Station near Martin Way and Desmond Drive, and the sewer force main from the Martin Village Pump Station which runs west to its connection to the existing LOTT Joint Facility interceptor west of the intersection of Sleater-Kinney Road and Martin Way, together with all associated deeds, easements, and franchise agreements, shall become LOTT Joint Facilities as set forth in the terms of a Facilities Acquisition Agreement for total amount not to exceed \$2,390,000, said amount to be drawn 25% from LOTT's Capacity Development Charge account and 75% from LOTT monthly rate revenues, and

**IT IS FURTHER AGREED** by the LOTT Partners that a new gravity sewer line from the southern end of the Capitol Boulevard Bridge across the Deschutes River, west to Deschutes Parkway, and north along Deschutes Parkway to the existing LOTT Capitol Lake Pump Station, and the associated parallel sewer force main addition north from the Capitol Lake Pump Station through northwest downtown Olympia to an existing LOTT Joint Facility interceptor in the vicinity of Olympia Avenue and Adams Street shall be a LOTT Joint Facility to be engineered using funds already appropriated for that purpose and constructed for an amount estimated at \$5,274,353, 9% of which shall be drawn from LOTT's Capacity Development Charge account and 91% from LOTT monthly rate revenues.

**CONTINUES ON NEXT PAGE**

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

**City of Lacey:**

By \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

By \_\_\_\_\_

Attest: By \_\_\_\_\_

**City of Olympia:**

By \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

By \_\_\_\_\_

Attest: By \_\_\_\_\_

**City of Tumwater:**

By \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

By \_\_\_\_\_

Attest: By \_\_\_\_\_

**Thurston County:**

By \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

By \_\_\_\_\_

Attest: By \_\_\_\_\_

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## Exhibit J

### Intergovernmental Contract For Inflow and Infiltration Management and New Capacity Planning

**WHEREAS**, pursuant to the Intergovernmental Contract for Wastewater Facilities Management dated November, 1976, (hereinafter “LOTT 1976 Contract”) the LOTT Partners agreed to cooperatively construct and maintain joint facilities for wastewater treatment and discharge; and

**WHEREAS**, pursuant to the Intergovernmental Contract of September, 1991, (hereinafter “LOTT 1991 Contract”) the LOTT Partners affirmed their intent to assure long-term availability of capacity in LOTT joint facilities to intercept, treat, and discharge sanitary sewage in an environmentally sound and cost effective manner for the benefit of all Partners; and

**WHEREAS**, under the terms of the LOTT 1991 Contract, the Partners agreed to conduct an engineering study of inflow and infiltration and thereafter set a standard for allowable inflow and infiltration, define an equalization basin service area and agree upon a program for the cost effective removal of inflow and infiltration; and

**WHEREAS**, the agreed-upon study of inflow and infiltration (hereinafter “LOTT I/I Study”) is complete and the Partners have learned that the extent of inflow and infiltration is such that capacity for treating wastewater using existing LOTT joint facilities cannot reasonably be provided to the year 2010 as assumed in the LOTT 1991 Contract; and

**WHEREAS**, the Partners have concluded that standards for allowable inflow and infiltration cannot be established in the manner assumed in the LOTT 1991 Contract without either forcing construction of inflow and infiltration removal projects which are clearly not cost effective or creating the potential for additional inflow and infiltration into the LOTT system; and

**WHEREAS**, the Partners have also concluded that during a ten year storm the equalization basins in the existing LOTT Wastewater Treatment Plant are inadequate to

effectively manage inflow and infiltration from even a small portion of the combined sewer system; and

**WHEREAS**, using information developed during the LOTT I/I Study, the Partners found that while LOTT system inflow and infiltration, which originates primarily in the City of Olympia, can dramatically impact treatment capacity during heavy rain, the cost to treat such flows is, and has been, approximately equal to the value of in-kind contributions made by the City of Olympia to the LOTT Partnership; and

**WHEREAS**, during the course of the LOTT I/I Study, the LOTT Partners concluded that only through a combination of cost effective inflow and infiltration removal and water conservation efforts, and immediate initiation of planning for additional wastewater treatment capacity can adequate treatment capacity for all Partners be reasonably assured, and

**WHEREAS**, during the course of consideration of long-term capacity needs the Partners have determined that to the extent practicable new capacity should be financed using the principle that new connections should fund new capacity, now

**THEREFORE**, it is agreed by the LOTT Partners as follows:

#### **1. Purpose of Agreement**

In order to cooperatively preserve capacity in the existing LOTT treatment facilities and to plan for new wastewater treatment facilities on an accelerated basis, the LOTT Partners, collectively and individually, commit by this Contract to act on a cooperative basis by authorizing the LOTT Advisory Committee, with the assistance of the Technical Sub-Committee, to study, decide upon and implement necessary wastewater strategies as provided in this Contract. Each Partner recognizes that the successful implementation of those strategies may require each Partner to actively study and implement commensurate improvements in its local system.

To facilitate these reciprocal commitments, the LOTT Partners are formally recognizing by this Contract their respective legal and equitable interests in current LOTT facilities and their agreement in resolving any pending disputes or issues including the equitable allocation of past City of Olympia infiltration and inflow treatment costs.

This Contract is intended to amend and supersede inconsistent provisions of the LOTT 1976 Contract and LOTT 1991 Contract in recognition of changing conditions and capacity needs within the LOTT service area and to provide a mutually agreed basis among the LOTT Partners for future facility planning and implementation efforts.

## **2. Definitions**

For the purposes of this Contract, the following words and phrases shall be defined as set forth below:

- a. “Advisory Committee” shall mean the committee of the same name defined in the Intergovernmental Contract for Wastewater Facilities Management of November 30, 1976 (LOTT 1976 Contract) as amended.
- b. “Cost Effective” shall mean the cost of capacity management options, such as conservation or removal of inflow and infiltration which is equal to or less than the value of the savings they achieve through delay of the anticipated date when a new wastewater treatment facility will be needed.
- c. “Equivalent Residential Unit” or “ERU” shall mean the flow unit established in the LOTT 1976 Contract, as amended.
- d. “Financial Responsibility” as used in reference to the LOTT Partners in Section 4, Subsection D of this contract shall mean each Partner has financial obligation based on each Partner’s number of connected equivalent residential units consistent with the LOTT 1976 Contract, as amended, or as required by the Partner’s allocation of new capacity as established pursuant to Section 6, Sub-Section B of this contract.
- e. “Joint Facilities” shall mean those facilities, either existing or future, as defined and described in the LOTT 1976 Contract, as amended.
- f. “I & I Removal” shall mean the actual or intended removal or reduction of inflow and/or infiltration present in the sewer systems tributary to LOTT joint facilities and the removal or reduction of inflow and /or infiltration originating in LOTT joint facilities.

- g. "Infiltration" shall mean ground water entering LOTT joint facilities and ground water entering the system of sanitary sewers tributary to LOTT joint facilities.
- h. "Inflow" shall mean storm water entering LOTT joint facilities and storm water entering the system of sanitary sewers tributary to LOTT joint facilities as a result of constructed combined storm/sanitary sewer facilities.
- i. "LOTT" shall mean the sewerage services, facilities and activities cooperatively performed, constructed and operated by the cities of Lacey, Olympia, and Tumwater and Thurston County pursuant to the LOTT 1976 Contract, as amended.
- j. "LOTT Fund" shall mean the City of Olympia fund used to accumulate and disperse revenues from monthly and other LOTT charges.
- k. "LOTT Inflow and Infiltration Study" shall mean the study of the same name prepared for the LOTT Wastewater Management Partnership between 1992 and 1994.
- l. "Partner" shall mean "Original Participant" as defined in the LOTT 1976 Contract, as amended.
- m. "Reserve Capacity Charge Receipts" shall mean the money collected from the Reserve Capacity Charge as defined in the LOTT 1976 Contract, as amended, and as further defined in the LOTT 1991 Contract, as amended.
- n. "Water conservation" shall mean those efforts which reduce, or are intended to reduce, the amount of residential, commercial and industrial wastewater entering the sewer systems tributary to LOTT joint facilities. Other efforts which reduce the amount of water consumed but which do not affect the amount of water entering the sewer systems tributary to LOTT are, for the purposes of this contract, not considered water conservation. Efforts which reduce inflow and infiltration are, for the purposes of this contract, not considered water conservation.
- o. "Technical Sub-Committee" shall mean the committee of the same name defined in the LOTT 1976 Contract, as amended.

- p. “Wet weather season” shall mean the calendar period November through February.

### **3. Confirmation of LOTT Partners’ Interests**

#### **A. Capacity and Facility Use**

The LOTT Partners, collectively and individually, acknowledge and agree that each Partner has a beneficial interest in the current LOTT joint facilities and in the capacity of such facilities due to their past funding of construction of the facilities and their continued payments for treatment services including financing and operating costs of the LOTT system. Pursuant to the LOTT 1976 Contract, the LOTT Partners, collectively and individually, also acknowledge and agree that each Partner has a right to utilize such current capacity on a “first come first serve” basis as defined in the LOTT 1976 Contract, as amended.

#### **B. Property Use**

The City of Olympia hereby acknowledges and agrees that such beneficial interests of the Partners extends to the continued use and enjoyment, in common with the City, of the LOTT treatment plant facilities and property for so long as the facilities are required by LOTT for wastewater treatment purposes.

### **4. Inflow and Infiltration**

#### **A. Inflow and Infiltration Standards**

Section 3 of the LOTT 1991 Contract requires that the LOTT Partners adopt standards for acceptable levels of inflow and infiltration, and that Partners not meeting the adopted standards are to compensate the LOTT Partnership on an Equivalent Residential Unit Basis for the estimated flows in excess of adopted standards are to compensate the LOTT Partnership on an Equivalent Residential Unit Basis of the estimated flows in excess of adopted standards. As a result of the technical findings of the LOTT I/I Study, the LOTT Partners hereby rescind any LOTT 1991 Contract requirements to establish and enforce standards for acceptable levels of inflow and infiltration within the system of sewers flowing into LOTT joint facilities. From and after the effective date of this Contract, all binding Partnership requirements concerning

acceptable levels of inflow and infiltration shall be contained in and governed by this Contract. Further, the LOTT Partners agree that all new sewers tributary to LOTT joint facilities and all future LOTT joint facilities which are constructed subsequent to the date of this Contract by LOTT or by any participant shall be constructed to allow no more inflow and infiltration than 700 gallons per day per inch/mile of new sewer line.

B. Equalization Basin Service Area

Section 4 of the LOTT 1991 Contract requires that an Equalization Basin Service Area be determined. As a result of the technical findings of the LOTT I/I Study, the LOTT Partners hereby rescind any LOTT 1991 Contract requirements to establish an Equalization Basin Service Area.

C. Olympia Inflow and Infiltration Removal Program

The City of Olympia hereby agrees to design and implement in good faith the infiltration removal program recommended in the LOTT I/I Study which is expected to remove 2,712,000 gallons or 8.28 per cent of the current system-wide 10 year storm/24 hour peak inflow and infiltration from the LOTT joint facilities at an estimated cost of \$8,791,000 in 1994 dollars (including the cost of design, administration and construction). The City of Olympia will follow the I/I Study recommendation to the extent feasible and consistent with design-level findings and good civil engineering practice. The City of Olympia agrees to provide a reasonable opportunity for the LOTT Technical Sub-Committee to review design and construction decisions and expenditures related to this infiltration removal program.

The City of Olympia agrees to complete all such recommended program work by December 31, 2001. Should the City of Olympia fail to complete implementation of the Study's recommended infiltration removal by December 31, 2001, the City of Olympia shall compensate the LOTT Fund on an Equivalent Residential Unit basis for the difference between the 10 year storm/24 hour peak infiltration flows actually removed and the 2,712,000 gallon 10 year storm/24 hour peak flows estimated as likely to be removed in the LOTT I/I Study until such time as the Study's recommendation for Olympia facilities has been implemented or until the City of Olympia has expended the then current equivalent of \$8,791,000 in 1994 dollars on reasonable and appropriate efforts to complete implementation of the Study's recommendation.

At such time as the City of Olympia, according to pre- and post-construction flow measurements by LOTT, has removed infiltration or inflow in an amount equal to the 10 year storm/24 hour peak 2,712,000 gallon volume estimated in the LOTT I/I Study recommendation, or when the Technical Sub-Committee agrees the City Of Olympia has expended \$8,791,000 in 1994 dollars on reasonable and appropriate efforts to complete implementation of the Study recommendation, the City of Olympia's obligation to fund and manage inflow and infiltration removal is recognized by all present and future LOTT Partners as forever satisfied except as provided later in this section under Subsection F.

D. LOTT Inflow and Infiltration Projects

Should additional inflow and infiltration removal beyond that recommended in the LOTT I/I Study later be found by the LOTT Partners to be appropriate and cost effective, the LOTT Partners, acting through the Advisory Committee in their efforts to assure adequate treatment capacity, shall assume financial responsibility for such additional inflow and infiltration removal. Each Partner agrees to act in good faith and in a timely manner to cooperate with any such additional inflow and infiltration removal efforts recommended by the Advisory Committee provided that no such efforts will be conducted in a City of Olympia area bordered by Union Street on the south, Capitol Lake and Bud Inlet on the west, State Street on the north and Eastside Street on the east unless such removal can be part of otherwise required City of Olympia sewer repair or replacement projects within the specified area. In that case, the LOTT Partners, upon separate agreement with the City of Olympia, will be financially responsible for that portion of the work associated with inflow and infiltration removal which the LOTT Partners wish to pursue in their efforts to assure adequate treatment capacity.

If regulatory authorities require inflow and infiltration removal which the LOTT Partners do not consider cost effective, the Partner jurisdiction wherein the inflow and infiltration removal is required shall be financially responsible.

E. Cost of Treating Inflow and Infiltration, Benefits of Olympia Facilities and Services

The LOTT Partners agree that although the substantial portion of inflow and infiltration passing through LOTT joint facilities originates in the City of Olympia due to Olympia's combined sewer system, the cost of treating those flows on an annual basis is, and has been, approximately equal to the value provided by the City of Olympia to LOTT for land owned by the City of Olympia but fully utilized by the LOTT Wastewater Treatment Plant for the benefit of all LOTT Partners and the extra cost of administrative and overhead services and benefits provided to the LOTT Partners by the City of Olympia beyond those costs already compensated by the LOTT Partners. It is further agreed that the sum of these in-kind contributions by the City of Olympia and the continued contribution of such value and services shall be considered appropriate compensation for the past and future cost of treating the City's combined flows, provided payment for overhead services remains at its current level as adjusted annually for inflation according to the federal Seattle Area Consumer Price Index, and provided further, that LOTT Partners have continued use of Olympia property occupied by current LOTT joint facilities without charge.

F. Prevention of Further Inflow and Infiltration Degradation

The LOTT Partners agree that additional inflow and infiltration in the system of sewers tributary to and including LOTT joint facilities is to be avoided so as to prevent further capacity degradation of LOTT joint facilities beyond that which exists at the time of this Contract and that which is otherwise herein accepted or removed. Each LOTT Partner agrees to exercise sound engineering judgment in the repair and maintenance of its own sewers tributary to LOTT joint facilities to assure minimal additional inflow and infiltration will be allowed beyond that which exists at the time of this Contract and that which is otherwise herein accepted or removed.

Beginning March, 1996, and each year thereafter, it is agreed that each Partner with sewer lines tributary to LOTT joint facilities will prepare and submit to the LOTT Technical Sub-Committee an updated inventory of those sewer lines with an accompanying report identifying all updates, modifications, repairs and additions made during the preceding year to sewer lines which are tributary to LOTT joint facilities. The

inventory shall be similar to and substantially in the form of Appendix B of the LOTT I/I Study. LOTT will prepare a similar report for LOTT joint facility sewer lines. The Technical Sub-Committee will review the materials submitted and, commencing June, 1996, report annually to the Advisory Committee concerning the status of the systems of sewers tributary to LOTT joint facilities and the status of LOTT joint facilities relative to modifications, repairs and additions and the expected resulting changes in inflow and infiltration.

Beginning in the wet weather season of 1998-1999, and every seven years thereafter, the Partners agree that LOTT will conduct an update of the LOTT I/I Study to determine if significant additional inflow and infiltration exists which could result in a significant degradation of system capacity beyond that which exists at the time of this Contract and which is otherwise herein accepted or removed. Should such a condition(s) be present, each LOTT Partner agrees to act within twelve months of receiving such information to begin correction of the facilities contributing to degradation within its jurisdiction when such correction is cost effective. All sewer lines with inflow and infiltration no greater than 1,500 gallons per day per inch mile are exempt from correction under this agreement. The Partners further agree that LOTT, acting through the Advisory Committee, will act within twelve months of receiving of such information to initiate cost effective correction of facilities contributing to degradation in LOTT joint facilities.

## **5. Water Conservation**

### **A. Purpose for Water Conservation Program**

The LOTT Partners agree that reducing the amount of water consumed which reaches the Partner's local wastewater systems will delay the need for additional wastewater treatment facilities provided by or through LOTT. The LOTT Partners further agree that water conservation can be a cost effective method for delaying the need to construct additional wastewater treatment facilities. The LOTT Partners also agree that primary responsibility for water conservation, as defined herein, rests with water utilities providing water which, in the form of wastewater, reaches LOTT joint facilities.

B. Partner's Conservation Commitments

Each Partner operating a water utility(s) which provides water that reaches LOTT joint facilities agrees to individually pursue water conservation efforts which result in a per capita reduction in wastewater flow to LOTT joint facilities. The LOTT Technical Sub-Committee, using information on per capita wastewater flows in the LOTT I/I Study, will, on or before December 31, 1995, further refine and mutually establish specific, current per capita wastewater flows for each Partner operating a water utility(s) which provides water that reaches LOTT facilities. The LOTT Technical Sub-Committee shall also establish on or before December 31, 1995, a measuring system for calculating per capita wastewater flows from each Partner operating a water utility(s) which provides water that reaches LOTT facilities. Further, the LOTT Technical Sub-Committee shall establish a recommended cost effective per capita residential conservation goal, expressed in gallons per day, and a related cost effective conservation goal for commercial and industrial sewer users, both of which can be achieved within ten years. These recommended goals shall be presented to The Advisory Committee for consideration on or before December 31, 1995. The Advisory Committee shall, on or before February 28, 1996, adopt a ten year cost effective residential per capita conservation goal and a related ten year cost effective goal for commercial and industrial sewer users.

The conservation goals shall be targeted for achievement by December 31, 2005. Each February, commencing in 1996, each Partner operating a water utility(s) which provides water that reaches LOTT facilities will submit a report to The Advisory Committee which identifies the water conservation efforts undertaken or continued during the preceding calendar year, the current per capita wastewater flow using the agreed upon measuring system, and the progress toward the conservation goals.

C. LOTT Assistance

Each Partner operating a water utility(s) which provides water that reaches LOTT facilities is encouraged to present proposals to the Advisory Committee requesting LOTT funds to support water conservation as defined in this contract. Within sixty days of receipt of such proposals, the Advisory Committee, with the involvement of the Technical Sub-Committee, will respond to each proposal indicating the level of financial

support the LOTT Partners will provide and whether that support will be available immediately or during the following fiscal year. Proposals will be reviewed based on their likelihood of success and whether they will be cost effective in managing LOTT wastewater treatment capacity. It is the Partners' intent to fully support those conservation activities which have a high likelihood of success and which are cost effective.

D. LOTT's Role in Conservation

The LOTT Partners collectively will, in the manner described herein, support the conservation activities of the water utilities providing water which reaches LOTT joint facilities in the form of wastewater. LOTT will, while supporting and encouraging those activities, also search for and implement cost effective conservation activities which complement those of the water utilities and which can be effectively managed by LOTT acting on behalf of all the Partners.

**6. New Capacity Planning**

A. Initiate Wastewater Treatment Capacity Planning

The LOTT Partners agree that upon approval of this Contract, LOTT should act as quickly as feasible to secure engineering services, prepare a scope of work, and initiate facilities planning as defined by the United States Environmental Protection Agency pursuant to 40 CFR Part 35.917 and in Chapter 173-240 of the Washington Administrative Code to assure adequate future wastewater treatment capacity for the LOTT Partners. It is further agreed that the Advisory Committee, with assistance from the Technical Sub-Committee, is hereby authorized to conduct and timely complete facilities planning according to the general schedule described below. The planning effort will review all reasonable alternative for developing new capacity, including inflow and infiltration removal beyond that which is described in or provided for by Section 4 of this Contract. The planning will also consider population growth information consistent with local planning and regional growth management planning in developing refined flow projections beyond those already developed in the LOTT I/I Study.

The planning effort will be coordinated with other local, regional and state agencies and include an appropriate environmental review process consistent with

requirements of the Washington State Environmental Policy Act. The planning effort will provide adequate opportunity for citizens potentially affected by LOTT's planning outcomes to be aware of the planning process and to provide input to the Advisory Committee's planning decisions as plans are being prepared.

No later than June 30, 1998, and prior to completing facilities planning, the Partners agree to have convened and completed discussions about Partnership processes and operating procedures relative to decisions concerning planning, designing, financing and constructing future joint facilities.

B. Wastewater Treatment Capacity Allocation

Facilities planning effort identified above will include consideration of how new capacity is to be allocated among the LOTT Partners. The Partners hereby agree in principle that any allocation of future LOTT capacity should be based on each Partner's decision about its own future wastewater treatment capacity requirements provided that decision is consistent with State of Washington forecasts provided for growth management purposes, and maintaining prudent levels of reserve capacity. Until a new capacity allocation system is approved by the LOTT Partners, nothing herein shall be construed as changing the allocation established in the LOTT 1976 Contract as amended.

C. Financing Planning and New Wastewater Treatment Capacity

The facilities planning effort will be paid for using no less than sixty percent Reserve Capacity Charge receipts from LOTT funds and no more than forty percent from other LOTT revenues. It is hereby agreed that in considering how to finance new wastewater treatment capacity alternatives and recognizing the interest of existing rate payers, to the extent practicable the principle of "growth paying for growth" shall apply.

D. Schedule for Facilities Planning, Facilities Design and Facilities Construction

The LOTT Partners agree that time is of the essence in preparing a facilities plan so that the maximum amount of time is available for design and construction of whatever new capacity alternative(s) may be selected by the Advisory Committee. To that end, it is agreed that facilities planning will be completed no later than June 30, 1998, and that facilities planning information concerning estimates of remaining capacity

in existing LOTT joint facilities and schedules for timely implementation of new capacity alternatives will be made available as soon as possible to the Washington State Department of Ecology and each Partner for use in preparing each Partner's National Pollutant Discharge Elimination System Permit for LOTT joint facilities. It is further agreed that all reasonable efforts will be undertaken by the LOTT Partners collectively and individually to avoid Washington State Department of Ecology imposition of a sewer connection and septic tank permit moratorium as a result of insufficient wastewater treatment capacity or lack of reasonable progress in planning for wastewater treatment capacity.

## **7. Dispute Resolution**

### **A. Advisory Committee Review**

In the event of any dispute, claim or demand for performance ("issue") between or among Partners concerning, the Partner or Partners concerned with the issue shall present it to the Advisory Committee in detail and in writing for study and recommendation. Oral presentations shall be permitted and all Partners shall be given a reasonable opportunity to respond to the issue prior to consideration of a recommendation by the Advisory Committee. The Advisory Committee shall then make such findings and prepare such conclusions and recommendations as may represent the majority decision of the Advisory Committee on the issue within ninety (90) days after receipt of the initial written presentation of the issue.

### **B. Non-binding Mediation**

In the event the Advisory Committee's actions do not resolve the issue to the satisfaction of all of the Partners, any Partner may refer the matter to mediation by filing a written request with the Advisory Committee within thirty (30) days of the issuance of the advisory Committee's decision. The Advisory Committee shall refer the request to the presiding judge of the Thurston County Superior Court with the request that the court appoint a qualified mediator to establish the rules, schedule and scope of the mediation, unless all of the Partners agree on an appropriate mediator and the rules, schedule and scope of the mediation. All Partners shall be parties to the mediation and shall equally share the cost of the mediator.

The mediation shall occur within ninety (90) days of the appointment of a mediator. The mediation shall be conducted de novo from prior dispute resolution proceedings.

C. Binding Arbitration

In the event the issue is not resolved by mediation, then the issue may be submitted to binding arbitration by any Partner pursuant to paragraph 15 of the LOTT 1976 Contract and Chapter 7.04 of the Revised Code of Washington. All Partners shall be parties to the arbitration and shall equally share the cost of the arbitrator. Such arbitration shall be limited to the interpretation and application of this Contract and may not impair the contract and debt obligations of any Partner, including Olympia. The arbitration shall be conducted de novo from prior dispute resolution proceedings.

D. Litigation

Completion of the Advisory Committee review, the mediation steps and binding arbitration shall be a prerequisite to the filing of any legal action relative to interpretation of this agreement in Thurston County Superior Court. Subject to this condition, the terms of this Contract shall be specifically enforceable.

*--continues on next page--*

So approved this 27th day of March, 1995.

**City of Lacey:**

By: Jon Halvorson

Its Mayor

Attest:

Charlotte Taylor

**City of Olympia:**

By: Bob Jacobs

Its Mayor

Attest:

By: Jane Ragland Kirkemo

**City of Tumwater:**

By: Ralph Osgood

Its Mayor

Attest:

Sheryle Wyatt

**County of Thurston:**

By: Judy Wilson

Its Chairperson

Attest:

LaBonita Bowman

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## Exhibit K

INTERLOCAL COOPERATION AGREEMENT  
BETWEEN THURSTON COUNTY  
AND THE CITIES OF LACEY, OLYMPIA AND TUMWATER  
REGARDING JOINT WASTEWATER FLOW  
REDUCTION AND WATER CONSERVATION PROJECTS

This agreement, dated May 28, 1997, hereinafter referred to as GENERAL AGREEMENT, is made and entered into by and between Thurston County and the cities of Lacey, Olympia and Tumwater for joint planning, management and operation of wastewater flow reduction and water conservation projects. The terms of agreement about each specific project will be described in separate agreements, hereinafter referred to as PROJECT AGREEMENTS.

WITNESSETH:

WHEREAS, it is in the public interest to effectively reduce LOTT wastewater flows and thereby help delay the need for developing additional sewage treatment capacity; and

WHEREAS, it is in the public interest to make most effective use of limited water resources; and

WHEREAS, it is to the mutual advantage of the parties to share the cost of preparing general water and wastewater reduction plans, developing public education, retrofit and other programs for water conservation and wastewater flow reduction; and

WHEREAS, coordinated water conservation and wastewater flow reduction programs and messages promote the wise use of resources and provide benefits across jurisdictional boundaries; and

WHEREAS, in the Intergovernmental Contract for Inflow and Infiltration Management and New Capacity Planning, dated March 27, 1995, the LOTT Partners agreed that water conservation can be a cost-effective method for delaying the need to construct additional wastewater treatment facilities; and

WHEREAS, the LOTT Partners further agreed in the March 27, 1995 contract that primary responsibility for water conservation rests with water utilities providing water which, in the form of wastewater, reaches LOTT joint facilities; and

WHEREAS, the LOTT Partners further agreed in the March 27, 1995 contract that each Partner operating such water utility(s) would individually pursue water conservation efforts which result in a per capita reduction in wastewater flow to LOTT joint facilities; and

WHEREAS, pursuant to Chapter 39.34 RCW, the parties are authorized to jointly exercise the powers, privileges, and authority described herein;

NOW, THEREFORE, in consideration of the mutual promises and covenants recited herein, the parties agree and resolve as follows:

I. PURPOSE

This GENERAL AGREEMENT establishes the benefits and obligations to the parties for participating in cooperative water conservation and wastewater flow reduction planning and management activities.

II. RELATIONSHIP

The parties agree that they intend to act jointly pursuant to the authority of Chapter 39.34 RCW to accomplish the purpose recited herein. No separate legal entity is created by this agreement.

### III. MANAGEMENT

All activities conducted pursuant to this GENERAL AGREEMENT shall be coordinated and managed by the STEERING COMMITTEE, whose members shall be the Directors of Public Works or Directors of Water and Waste Management of the four jurisdictions.

### IV. ACTIVITIES

Any water conservation or wastewater flow reduction activity or projects may be conducted under the terms of this GENERAL AGREEMENT by consent of two or more parties. For each activity or project, detailed terms of agreement related to the scope of work, responsibility of each party and financing shall be prepared as a PROJECT AGREEMENT attached to this document. Such activities shall be consistent with adopted policies and budgets of each jurisdiction and LOTT. Each PROJECT AGREEMENT shall be adopted and/or officially approved by each of the affected jurisdictions.

### V. PUBLIC INFORMATION, EDUCATION AND INVOLVEMENT

It is understood and recognized that each activity or project completed under this GENERAL AGREEMENT will require varying amounts of public information, education and involvement. The specific scope and type of public activity shall be included in the PROJECT AGREEMENT attached to this GENERAL AGREEMENT.

### VI. RESPONSIBILITY

Within each separate PROJECT AGREEMENT, one of the following two responsibility approaches will apply and will be specifically defined.

A. Lead Agency Approach. In this model, one jurisdiction will be designated in the applicable PROJECT AGREEMENT as lead agency and other participating jurisdictions, not serving as lead agency, shall be cooperating agencies.

1. Lead Agency will be responsible to:

- a. Administer the project, including managing any grant funds and coordinating with other jurisdictions and agencies to ensure that work proceeds in an acceptable manner and that performance is timely.
- b. Account for funds expended and bill each jurisdiction, as appropriate, for its agreed upon share of the project at regular intervals.
- c. Provide legal opinions and support as necessary to carry out the work.
- d. Provide required budget and program information and/or requirements to cooperating agencies allowing adequate time for preparation of their annual budgets and workplans.
- e. Coordinate the project with other County and City water conservation and/or wastewater flow reduction programs.

2. Cooperating Agencies:

For each project, cooperating agencies not serving as lead agency will be responsible to:

- a. Assign their chief public works or engineering manager or designee to participate and assist the lead agency in preparing the work program and directing the overall project.

- b. Reimburse the lead agency for their share of the total project or account for labor and other costs within the terms of the PROJECT AGREEMENT. Make payments within 45 days following billing by the lead agency.
- c. Keep a record of costs incurred as part of the project, whether or not they are to be reimbursed.
- d. Provide information required for the project.
- e. Review the data and findings of the project.
- f. Assist as appropriate with obtaining public participation and/or input.
- g. Provide feedback and evaluation where needed for development of future projects.

B. Project Policy Agreement Approach. In this model, participating jurisdictions will incorporate in the applicable PROJECT AGREEMENT the terms by which separate projects undertaken by each jurisdiction shall achieve common goals and will be carried out in a manner that provides consistent service to customers across jurisdictional boundaries. Elements incorporated in the PROJECT AGREEMENT may include provisions for joint selection of service providers, development and distribution of consistent educational and marketing messages, establishment and implementation of evaluation techniques and procedures, equitable allocation of charges and benefits to customers, and other issues deemed necessary to the promotion of a consistent regional program. Each participating jurisdiction will be responsible for carrying out and funding its own project.

VII. COST ALLOCATION

Costs for each project may be shared by LOTT, the participating water and/or sewer utilities, customers and/or other funding sources. Generally, costs for each project supported by LOTT and achieving wastewater flow reductions through activities targeting sewer customers shall be allocated based on LOTT's flow reduction program funding guidelines effective at the time the project is approved. Costs to serve water customers who are not also LOTT sewer customers shall be covered by the utilities, customers and/or other funding sources. The specific method of cost allocation shall be included in the detailed terms of the activity or project as described in the PROJECT AGREEMENT attached to this GENERAL AGREEMENT.

VIII. DURATION

This GENERAL AGREEMENT shall remain in effect for five years and may be extended upon agreement of the participating jurisdictions.

IX. WITHDRAWAL

Any party to this GENERAL AGREEMENT may withdraw after giving 30 days written notice to the other parties. The withdrawing party will remain responsible for fulfilling all financial commitments made under this GENERAL AGREEMENT and any PROJECT AGREEMENTS, except as mutually agreed upon by the affected parties.

CITY OF LACEY

BOARD OF COMMISSIONERS  
Thurston County, Washington

By: Greg J. Cuoio

ABSENT  
Chairman

ATTEST:

\_\_\_\_\_  
Charlotte M. Taylor

\_\_\_\_\_  
Richard Q. Nichols  
Commissioner

CITY OF OLYMPIA

\_\_\_\_\_  
Judy Wilson  
Commissioner

By: \_\_\_\_\_  
Richard C. Cushing

ATTEST:

ATTEST:

\_\_\_\_\_  
Jane Ragland Kirkemo  
City Clerk

\_\_\_\_\_  
LaBonita I. Bowmar  
Clerk of the Board

CITY OF TUMWATER

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Ralph Osgood

\_\_\_\_\_  
Prosecuting Attorney

ATTEST:

BY:

\_\_\_\_\_  
Sheryle Wyatt  
City Clerk

\_\_\_\_\_  
Mark H. Calkins  
Deputy Prosecuting Attorney

APPROVED AS TO FORM:

\_\_\_\_\_  
P. Brock  
City Attorney

## **Exhibit L**

### **ADMINISTRATIVE AND TREASURY SERVICES CONTRACT**

THIS CONTRACT ("Contract"), dated \_\_\_\_\_, 2000, is entered into by and between the City of Olympia ("Olympia"), a Washington municipal corporation, and the LOTT Wastewater Alliance ("LOTT"), a nonprofit corporation formed and existing under Chapters 24.03 and 39.34 RCW. The parties are herein individually referred to a "Party" and collectively as the "Parties."

#### RECITALS

WHEREAS, the Cities of Lacey, Olympia, and Tumwater and Thurston County (ALOTT Partners@) have entered the Interlocal Cooperation Act Agreement for Wastewater Management by the LOTT Wastewater Alliance, dated \_\_\_\_\_, 2000 ("Interlocal Cooperation Act Agreement"). Any capitalized terms not defined herein shall have the meaning as defined in the Interlocal Cooperation Act Agreement; and

WHEREAS, RCW 43.09.285 requires the funds of the LOTT Wastewater Alliance to be deposited in the public treasury of one of the LOTT Partners; and

WHEREAS, the Interlocal Cooperation Act Agreement provides for Olympia and LOTT to enter this Contract so that Olympia may continue to provide certain administrative and treasury services to LOTT for at least an initial period of time; and

WHEREAS, Olympia has historically provided administrative treasury, and financial services for the LOTT Partnership prior to the Interlocal Cooperation Act Agreement; and

WHEREAS, the Parties desire to set out the specific terms and conditions of Olympia=s provision of services to LOTT.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereby agree as follows:

#### **1. General Description of Roles.**

The Parties intend for Olympia to perform limited treasury and accounting functions for LOTT, as defined below. This contract does not include providing financial advice, serving as a financial advisor to LOTT, capital facilities planning or financing, issuing of debt, administratively arbitrage regulations, or signing contracts or documents on behalf of LOTT, except for contracts or documents necessary to carry out the functions and intent of this contract. In addition, the Parties intend that Olympia provide informal consultations to LOTT regarding the above financial matters. LOTT will obtain formal advice and services regarding capital facilities financing, debt issuance, investment advice, and other financial matters from other sources.

## **2. Services Provided by Olympia.**

As directed by the LOTT Board and its duly authorized representatives, Olympia shall provide the following services to LOTT:

- a) Hold LOTT funds in a separate fund (the "LOTT Fund") and establish special accounts within the LOTT Fund as requested by LOTT or as required by state law.
- b) Receive and disburse LOTT funds. Olympia may disburse funds for debt service obligations in accord with bond covenants of LOTT without specific direction from the LOTT Wastewater Alliance, and establish bank accounts as needed to carry out this contract.
- c) Perform basic accounting services including detail of accounting transactions, maintenance of budget, accounts payable, accounts receivable, and payroll. Maintenance of detailed inventory and fixed asset records shall be the responsibility of LOTT. Project and grant accounting shall be the responsibility of LOTT, although Olympia will within the standard design of its accounting system provide for tracking of financial transactions of projects and grants.
- d) Investment of LOTT funds consistent with investment policies adopted by the LOTT Board. Establish investment accounts as needed.
- e) Assist with audits of LOTT.
- f) Prepare annual financial reports as required by the State Auditor=s Office.

LOTT shall be responsible for retaining any and all documents produced which are necessary for Olympia to carry out the provisions of this contract. Upon completion of the audit by the State Auditor=s Office, all documents produced for the audited period shall be delivered to LOTT.

Olympia shall perform the above functions in accordance with Generally Accepted Accounting Principles ("GAAP"), rules promulgated by the Auditor of the State of Washington, and other applicable law.

Olympia shall have access to LOTT books and records as necessary or convenient in performing services for LOTT. LOTT shall provide reasonable notice to Olympia of requests to perform tasks under this Contract.

## **3. Compensation.**

From the date of this agreement through December 31, 2001, the amount received by Olympia for overhead and indirect charges under the LOTT facilities Operations and Maintenance Agreement executed per Section 5.2 of the Interlocal Cooperation Act Agreement,

shall also cover the services rendered by Olympia under this contract. The Parties recognize that creation of the LOTT Wastewater Alliance as a separate entity will result in more effort for administration and treasury services than before. As a result, at least sixty (60) days prior to December 31, 2001, and for each year thereafter, Olympia will submit to LOTT for inclusion as an amendment to this contract the costs to perform the treasury and administrative functions separately under this agreement. LOTT will review these costs in good faith and, if these costs are acceptable to LOTT, that amount will be included in this contract as the payment to Olympia for services performed hereunder. If the Operation and Maintenance Contract for LOTT facilities is terminated prior to December 31, 2001, the Parties shall negotiate in good faith the compensation to be paid hereunder for the period this contract is in effect.

Separate from the above, each year LOTT will pay Olympia the out-of-pocket expenses Olympia incurs which are not customarily incurred in the provision of administrative and treasury services, such as investment fees, wire transfer fees, and setup costs.

#### **4. Billings.**

Overhead and indirect costs payable under the LOTT facilities Operations and Maintenance Contract which constitute compensation hereunder for the period indicated above, and reimbursement requests shall be billed by Olympia to LOTT. Payment on these billings shall be due within thirty (30) days of receipt thereof by LOTT. Delinquent amounts shall accrue interest at one percent per month. Compensation for services under this contract for any period after December 31, 2001 shall be billed and paid in the same manner.

#### **5. Contract Relationship.**

The relationship of Olympia to LOTT created by this Contract is that of an independent contractor, and none of Olympia's employees or agents shall be considered employees of LOTT.

#### **6. Term of Agreement.**

This contract shall take effect on the date Consolidation occurs pursuant to the Interlocal Cooperation Act Agreement ("Effective Date"). This Contract shall remain in effect unless and until earlier terminated for convenience by LOTT or Olympia.

#### **7. Termination for Convenience.**

Either party may terminate this Contract for convenience, which termination shall be effective one year after either party provides notice of termination to the other party. Neither party shall give notice of termination earlier than January 31, 2000. Prior to giving notice of termination of this Contract, LOTT shall have considered and documented Olympia's and alternate administrative and treasury service costs and practices as provided in the Interlocal Cooperation Act Agreement.

**8. Termination for Cause.**

Either Party may terminate this Contract upon material breach by the other party providing that the terminating Party first provides written notice of such breach to the other Party and such breach has not been corrected within a forty-five (45) day cure period, except if the cure cannot reasonably be completed within forty-five (45) days then the Party shall not be in default so long as it commences the cure within forty-five (45) days and promptly and diligently completes the same. The written notice shall specify the alleged breach and the action(s) that would cure it.

**9. Notices; Authorized Representatives.**

All notices shall be in writing and delivered in person or transmitted by certified mail, return receipt requested, postage prepaid. Notices required to be given to the City of Olympia shall be addressed as follows:

City Manager  
City of Olympia  
P.O. Box 1967  
Olympia WA 98507-1967

Notices required to be given to the LOTT Wastewater Alliance shall be addressed as follows:

Executive Director  
LOTT Partnership Administration  
2101 - 4th Ave., E./Suite 101  
Olympia WA 98506

**10. Dispute Resolution.**

Any disputes under this Agreement shall be resolved by negotiation, if possible. If impasse is reached, the Parties shall employ a panel with three arbitrators, one appointed by each party and the third by the two appointed arbitrators, to resolve the dispute. The ruling of the panel shall be binding, subject to judicial review under an arbitrary and capricious standard.

**11. Non-waiver.**

The failure on the part of either Party to enforce its right as to any provision of the Contract shall not be construed as a waiver of its rights to enforce such provision in the future.

**12. No Third Party Beneficiaries**

Except as expressly provided herein, this Contract is not intended to create rights in, or to grant remedies to, any third party as a beneficiary of this Contract or of any duty, obligation or undertaking established herein.

**13. Governing Law.**

This Contract shall be governed by the laws of the State of Washington.

**14. Assignment.**

With the approval of the LOTT Board, Olympia may assign this Contract to one of the other LOTT Partners.

**15. Severability.**

If one or more clauses, sections, or provisions of this Contract is held to be unlawful, invalid or unenforceable by any court with jurisdiction, the remainder of this Contract shall not be affected thereby.

**16. Modifications in Writing.**

Except as expressly provided in this Contract, no amendment or modification of this Contract shall be effective unless made in writing and executed by all Parties.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2000.

**CITY OF OLYMPIA**

**LOTT WASTEWATER ALLIANCE**

By:

By:

\_\_\_\_\_

\_\_\_\_\_

Its:

Its:

\_\_\_\_\_

\_\_\_\_\_

ATTEST:

ATTEST:

By:

By:

\_\_\_\_\_

\_\_\_\_\_

Approved as to form:

Approved as to form:

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Legal Counsel

Legal Council

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