

**INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF LACEY AND LOTT ALLIANCE
FOR
THE MULLEN ROAD EXTENSION PROJECT**

This agreement is made and entered into this 8th day of April 2009, by and between the LOTT Alliance, herein referred to as the "LOTT," and the City of Lacey, herein referred to as the "City."

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

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

Whereas, the City has retained a design engineer Perteet Engineering, Inc., for the Mullen Road Extension Project;

Whereas, the City will award the Mullen Road Extension Project to a qualified contractor through a competitively bid process;

Whereas, LOTT Capital Improvements Plan and Capital Budget provide for a reclaimed water pipeline in conjunction with the Chambers Prairie Satellite Reclaimed Water Plant that will be built pursuant to LOTT's Wastewater Resource Management Plan; and

Whereas, it is cost-effective and less intrusive for LOTT to locate the pipeline during the City's construction of the Mullen Road Improvements Project rather than later when the reclaimed water plant is constructed; and

Whereas, City is willing to have the additional work completed by its design engineer and its contractor;

NOW, THEREFORE, in consideration of the mutual promises contained herein and the documents incorporated herein, the parties agree as follows:

I. Purpose/Objective

The purpose of this Agreement is to incorporate construction of a LOTT reclaimed water pipeline into the City's Mullen Road extension project and for the City to receive reimbursement from LOTT for the City's costs of inclusion of said pipeline into its project.

II. Scope of Agreement/Work

City agrees to perform, or cause to be performed, all work and furnish, or cause to be furnished, all materials and equipment required to design, bid, award and construct the project described in this Agreement. The project shall be bid and constructed in accordance with this Agreement and all applicable city, state, and federal laws and regulations.

More particularly, City agrees to:

1. Supplement its design contract with Perteet Engineering, Inc., to include design of a reclaimed water pipeline on behalf of LOTT, including provision for a horizontal and vertical layout of the waste activated sludge and raw sewage facilities for future construction.
2. Administer the Mullen Road Extension Project contract inclusive of the additional work requested by LOTT.
3. Be responsible for all procedures and requirements mandated by law in conjunction with its contract and shall hold LOTT harmless from any liability therefore.
4. Accept the additional work on LOTT's behalf only upon inspection and acceptance by LOTT.
5. Provide all design and as-built record drawings and specifications in digital and hard copy format.

LOTT agrees to:

Reimburse all costs necessary to perform the work described in this Agreement within 30 days of receipt of an invoice from the City along with confirmation satisfactory to LOTT of the satisfactory completion of work included in the invoice, in an amount not to exceed \$340,500. Should the actual amount exceed \$340,500, Lacey will inform LOTT and obtain its approval for the greater amount. LOTT shall not unreasonably withhold an amendment to this Agreement allowing for the greater amount.

III. Payment

The City agrees to complete the construction of the reclaimed water pipeline on a time and materials basis. The current Engineer's estimate for construction is \$286,210, engineering design fees for Perteet Engineering, Inc., in the amount of \$22,610, and Inspection and Construction Management Services by the City of Lacey employees for \$31,680 for a total not to exceed \$340,500. LOTT agrees to pay the City the actual costs for design and construction of the reclaimed water pipeline.

The amounts paid shall include all applicable sales and use tax.

IV. Method of Payment

- A. The City agrees to invoice LOTT for actual costs.
- B. Payment will be made by LOTT to the City within thirty (30) days of receipt of an invoice from the City under the terms and conditions described herein.

V. Indemnification

A. The City agrees to defend, indemnify and hold LOTT, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees, arising out of or in connection with the City's performance of the Agreement, except for injuries and damages caused by the sole negligence of LOTT.

B. LOTT agrees to defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses, or suits including reasonable attorney fees, arising out of or in connection with LOTT's performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

VI. Joint Board

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

VII. Duration of Agreement

This Agreement shall be effective until completion of work unless otherwise terminated in the manner described under the termination section of this Agreement.

VIII. Termination of Agreement

This Agreement may be terminated upon sixty (60) days notice to the other party using the method of notice provided for in this Agreement. If this Agreement is terminated by LOTT, it shall promptly reimburse the City for any expenditure incurred by LOTT related to the work described in this Agreement.

IX. Entire Agreement

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

X. Recording

Prior to its entry into force, this Agreement shall be filed with the Thurston County Auditor's Office or posted upon the websites or other electronically retrievable public source as required by RCW 39.34.040.

XI. Notice

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

CITY OF LACEY

Angelea Miller, Project Administrator
City of Lacey
P.O. Box 3400
Lacey, WA 98509-3400

LOTT ALLIANCE

Michelle Barnett, Construction Manager
LOTT Alliance
111 Market Street NE, Suite 250
Olympia, WA 98501

XII. Equal Opportunity to Draft

The parties have participated and had an equal opportunity to participate in the drafting of this Agreement, and the Exhibits, if any, attached. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.

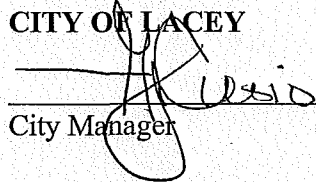
XIII. Interpretation and Venue

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

XIV. Effective Date

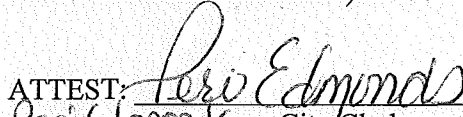
This Agreement shall take effect on the date of the last authorizing signature affixed hereto.

CITY OF LACEY

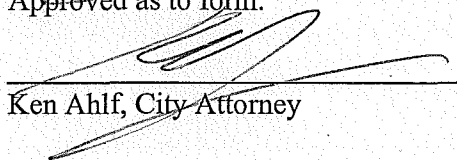


City Manager

Date: 4-22-09

ATTEST: 
Peri Edmonds, City Clerk
for Carol Litten

Approved as to form:



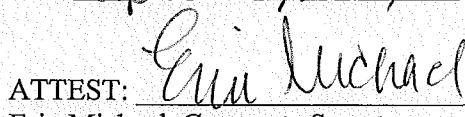
Ken Ahlf, City Attorney

LOTT ALLIANCE

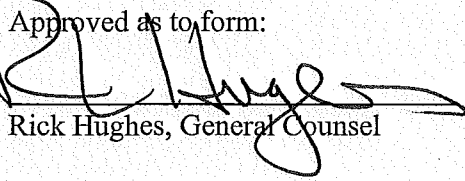


Michael Strub, Executive Director

Date: April 8, 2009

ATTEST: 
Erin Michael, Corporate Secretary

Approved as to form:



Rick Hughes, General Counsel