

RESOLUTION R-4937

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITIES OF AUBURN, BAINBRIDGE ISLAND, BELLEVUE, BURLINGTON, DES MOINES, EVERETT, ISSAQUAH, KENT, KIRKLAND, MOUNT VERNON, RENTON, SEATAC, SNOQUALMIE AND SUMNER AND COWLITZ COUNTY REGARDING LEGAL SERVICES.

WHEREAS, the participating jurisdictions (Coalition) desire to enter into an interlocal agreement to explore all legal and other avenues available to challenge the recently adopted Department of Ecology (DOE) Standards; and

WHEREAS, the Phase II National Pollutant Discharge Elimination System (NPDES) Permit is required under provisions of the Federal Clean Water Act and requires members of the Coalition to develop and maintain storm water programs; and

WHEREAS, The DOE Standards, purportedly adopted under the NPDES Permit authority, may impose costly burdens on landowners, including members of the Coalition and may also cause costly legal challenges to members of the Coalition as a result of enforcing the Standards; and

WHEREAS, the potential impact of the DOE Standards on members of the Coalition and property owners is so significant and far-reaching, members of the Coalition are joining together to file an appeal with the Pollution Control Hearings Board; and

WHEREAS, members of the Coalition wish to retain outside counsel to represent the Coalition in the appeal and wish to collectively pay for legal services; and

WHEREAS, the members of the Coalition are public agencies as defined by Ch. 39.34 of the Revised Code of Washington, and may enter into interlocal agreements on the basis of mutual advantage to provide services and facilities in the 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.

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City of Kirkland an Interlocal Agreement substantially similar to that attached as Exhibit "A", which is entitled "Interlocal Agreement between the Cities of Auburn, Bainbridge Island, Bellevue, Burlington, Des Moines, Everett, Issaquah, Kent,

Kirkland, Mount Vernon, Renton, SeaTac, Snoqualmie and Sumner and Cowlitz County Regarding Legal Services.”

Passed by majority vote of the Kirkland City Council in open meeting this 18th day of September, 2012.

Signed in authentication thereof this 18th day of September, 2012.


MAYOR

Attest:


City Clerk

INTERLOCAL AGREEMENT BETWEEN THE CITIES OF AUBURN, BAINBRIDGE ISLAND, BELLEVUE, BURLINGTON, DES MOINES, EVERETT, ISSAQUAH, KENT, MOUNT VERNON, RENTON, SEATAC, SNOQUALMIE AND SUMNER AND COWLITZ COUNTY REGARDING LEGAL SERVICES

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into between the Cities of Auburn, Bainbridge Island, Bellevue, Burlington, Des Moines, Everett, Issaquah, Kent, Mount Vernon, Renton, SeaTac, Snoqualmie, Sumner and Cowlitz County and any other Phase II Permittees that might join this Coalition of Governmental Entities (collectively, "Coalition").

RECITALS

1. The members of the Coalition are public agencies as defined by Ch. 39.34 of the Revised Code of Washington, and may enter into interlocal agreements on the basis of mutual advantage to provide services and facilities in the 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.

2. The Phase II National Pollutant Discharge Elimination System (NPDES) Permit is required under provisions of the Federal Clean Water Act and requires members of the Coalition in Washington to develop and maintain storm water programs. The Department of Ecology (DOE) has adopted standards (DOE Standards) purportedly under the NPDES Permit authority that may impose costly burdens on landowners, including members of the Coalition and may also cause costly legal challenges to members of the Coalition as a result of enforcing DOE Standards.

3. The potential impact of the DOE Standards on members of the Coalition and property owners is so significant and far-reaching, members of the Coalition are joining together to explore all legal and other avenues available to challenge the DOE Standards including but not limited to filing an appeal with the Pollution Control Hearings Board. The appeal deadline is August 31, 2012, the effective date of the DOE Standards. Members of the Coalition wish to retain outside counsel (Counsel) to represent the Coalition in said legal challenge(s) and wish to collectively pay Counsel as further set forth below.

4. NOW THEREFORE, in consideration of the terms and provisions contained herein, Coalition agrees as follows:

AGREEMENT

1. Purpose: It is the purpose of this Agreement to have the Coalition collectively pay for the legal services of Foster Pepper PLLC, or other selected legal counsel(Legal

Services) to represent the Coalition's interests in any legal challenges to the NPDES Phase II permits (Litigation).

2. Duration: This Agreement shall be effective August 13, 2012, irrespective of the date members of the Coalition execute this Agreement. Unless terminated by any party in accordance with Paragraph 5, Termination, the Agreement shall remain in full force and effect through conclusion of the Legal Services either through settlement of the dispute with the State of Washington, Pollution Control Hearings Board order, court order or other court disposition by the highest court authorized to hear an appeal of this matter, and/or other mutual resolution of the legal challenge or Legal Services as agreed to among members of the Coalition as provided in Paragraph 5.2 of this Agreement.

3. Administration: Coalition shall enter into a Joint Prosecution Agreement for the administration of the Legal Services and Litigation. Said Joint Prosecution Agreement shall include, but need not be limited to, a confidentiality agreement, establishing a structure for the administration and oversight of the Legal Services and Litigation that is efficient and effective given the number of Coalition who are parties to this Agreement, including oversight of the legal costs incurred pursuant to this Agreement and any other subjects necessary or appropriate to the administration of the Legal Services and prosecution of the Litigation. If this Agreement is effective prior to finalizing the Joint Prosecution Agreement, Coalition authorize the City of Bellevue to be Lead Agency to do all things necessary and/or appropriate to pursue the Litigation on behalf of Coalition including but not limited entering into an agreement for Legal Services as contemplated herein.

4. Payment:

4.1 The Legal Services' fees and costs shall be shared by members of the Coalition based upon the cost-sharing formula set forth in Exhibit "A" attached hereto and incorporated by this reference. This obligation shall continue through conclusion of the Legal Services as provided in Paragraph 2 above, unless a member of the Coalition terminates its participation in this Agreement as provided in Paragraph 5. Members of the Coalition hereby authorize said fees and costs up to \$255,000. The amount of this authorization may be increased administratively with the addition of new Coalition members up to a total of \$500,000. Provided, however, any increase in the cost of legal services that would require additional payments from any Coalition members in excess of the obligations set forth in Exhibit "A" shall require amendment of this Agreement unless an individual Coalition member expressly volunteers to increase its share without the necessity of amendment of this Interlocal Agreement.

4.2 The provider of Legal Services shall provide a monthly bill of its fees and costs to Bellevue. Bellevue shall timely pay the bill on behalf of Coalition. Within 15 days of approval of this Agreement, each member of the Coalition shall remit its proportionate share of the fees and costs to the City of Bellevue. Bellevue shall place these funds into an interest-bearing account, with any interest derived from these funds to be applied to the costs of the provider of Legal Services. At the time of drafting of this Agreement 12 governmental entities have committed to joining this appeal, and based upon the cost-

sharing formula set forth in Exhibit "A" hereto, each member of the Coalition is obligated to make payment of its proportionate share to the City of Bellevue. In the event Bellevue must take legal action to collect any amount due from a member of the Coalition, Bellevue shall be entitled to recover all costs for said action including reasonable attorney's fees.

4.3 In the event additional governmental entities join this Agreement, each new member of the Coalition shall be obligated to payment to the City of Bellevue based upon the cost-sharing formula set forth in Exhibit "A".

4.4 While it is recognized that members of the Coalition may not be able to sign this Agreement before August 31, 2012 it is agreed that the members will benefit from the Legal Services provided herein. Therefore, it is presumed that a member of the Coalition which enters into and signs this Agreement agrees to pay for Legal Services performed from and after August 13, 2012, regardless of the date of signing. Adjustments to amounts previously billed and received by Bellevue due to later joining members of the Coalition will be reconciled on a semi-annual basis.

5. Termination:

5.1 Termination by Notice: Any participating member of the Coalition may terminate its participation in this Agreement by providing at least sixty (60) days prior written notice to all other participating members. The terminating member must pay the full share of the Legal Services Fees and Costs due through the date of termination three months from the date of Notice. Should it become necessary to amend this Agreement to increase the authorized total amount of fees and costs set forth in Paragraph 4.1, or a member's proportionate share pursuant to Paragraph 4.3, any member may terminate its participation in this Agreement by providing written notice to all other participating members within 15 days of receiving written notice of the request to amend fees and costs. This termination shall not affect the obligation of the terminating member to pay its full share of the currently authorized Legal Services Fees and Costs, and shall not entitle the terminating member to any refund of monies already paid to the Coalition. Except as provided in Paragraph 5.2, the termination of a member's participation in this Agreement shall not result in the termination of this Agreement with respect to other members of the Coalition.

5.2 Termination by Mutual Written Agreement. This Agreement may be terminated at any time by mutual written agreement of a majority of the then participating members of the Coalition. Members shall be obligated to pay for Legal Services incurred to the date of Notice to the provider of Legal Services that its services are no longer needed and any reasonable additional fees and costs necessary to conclude its Legal Services.

5.3 Distribution of Assets upon Termination. It is not anticipated that any assets will be acquired as a result of participating in this Agreement. If, however, any assets are acquired with joint funds of the Members of the Coalition, those assets will be equally divided among the members at the asset's fair market value upon termination. The value of the assets shall be determined by using commonly accepted methods of valuation. Additionally, any funds remaining in the interest-bearing account following conclusion of all

Legal Services shall be divided among the members of the Coalition in amounts proportionate to the members' contributions to the Agreement based upon the cost-sharing formula contained in Exhibit "A and any other voluntary contributions made by that member.

6. Miscellaneous:

6.1 Amendments. Except as expressly provided herein, this Agreement may only be amended by mutual written agreement of the members of the Coalition.

6.2 Severability. If any section of this Agreement is adjudicated to be invalid, such action shall not affect the validity of any section not so adjudicated.

6.3 Interpretation. The legal presumption that an ambiguous term of this Agreement should be interpreted against the party who prepared the Agreement shall not apply.

6.4 Ownership of Property. Any property owned and used by Bellevue in connection with this Agreement shall remain the property of Bellevue and any property owned and used by any other participating member of the Coalition shall remain the property of that member, unless otherwise specifically provided in this Agreement or its amendment.

6.5 Notice. All communications regarding this Agreement will be sent to the parties at the addresses listed on the signature page of the Agreement, unless notified to the contrary. Any written notice shall become effective upon personal service or three (3) business days after the date of mailing by registered or certified mail, and will be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or any other address if later specified in writing. Except for the requirement of Notice as provided in this Agreement, nothing herein shall be construed to prevent the members of the Coalition from communicating among themselves by email, fax or other electronic means. Any governmental agency not specifically named herein, that later joins in this Agreement, shall give to all members of the Coalition then participating under this Agreement written notice of the name and address of the person that can accept notices on behalf of such joining governmental agency.

6.6 Counterparts. This Agreement may be entered into with any number of counterparts which, taken collectively, will constitute one entire agreement.

6.7 Ratification and Confirmation. All acts taken prior to the effective date of this Agreement that are consistent with the intent and purpose of the same are hereby ratified and confirmed retroactive to August 13, 2012.

6.8 Dispute Resolution. Should any dispute arise among members of the Coalition or between one or more members related to the interpretation, application or administration of this Agreement, the disputing parties shall participate in a good faith mediation effort to resolve their differences prior to bringing any legal action.

6.9 Compliance with RCW 39.34.040. Members of the Coalition entering into this Agreement shall be responsible for ensuring that it is filed in accordance with RCW 39.34.040.

IN WITNESS, the parties below execute this Agreement, which shall become effective August _____, 2012.

AUBURN: CITY OF AUBURN By: _____ Print Name: _____ Its: _____ Date: _____	BAINBRIDGE ISLAND: CITY OF BAINBRIDGE ISLAND By: _____ Print Name: _____ Its: _____ Date: _____
NOTICES TO BE SENT TO: _____ _____ _____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)	NOTICES TO BE SENT TO: _____ _____ _____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)
APPROVED AS TO FORM: _____ _____	APPROVED AS TO FORM: _____ _____

BELLEVUE: CITY OF BELLEVUE By: _____ Print Name: _____ Its: _____ Date: _____	BURLINGTON: CITY OF BURLINGTON By: _____ Print Name: _____ Its: _____ Date: _____
NOTICES TO BE SENT TO:	NOTICES TO BE SENT TO:

<p>_____</p> <p>_____</p> <p>_____</p> <p>() _____ - _____ (Telephone)</p> <p>() _____ - _____ (Facsimile)</p>	<p>_____</p> <p>_____</p> <p>_____</p> <p>() _____ - _____ (Telephone)</p> <p>() _____ - _____ (Facsimile)</p>
<p>APPROVED AS TO FORM:</p> <p>_____</p>	<p>APPROVED AS TO FORM:</p> <p>_____</p>
<p>DES MOINES:</p> <p>CITY OF DES MOINES</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p> <p>Date: _____</p>	<p>EVERETT:</p> <p>CITY OF EVERETT</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p> <p>Date: _____</p>
<p>NOTICES TO BE SENT TO:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>() _____ - _____ (Telephone)</p> <p>() _____ - _____ (Facsimile)</p>	<p>NOTICES TO BE SENT TO:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>() _____ - _____ (Telephone)</p> <p>() _____ - _____ (Facsimile)</p>
<p>APPROVED AS TO FORM:</p> <p>_____</p>	<p>APPROVED AS TO FORM:</p> <p>_____</p>

<p>ISSAQUAH:</p> <p>CITY OF ISSAQUAH</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>KENT:</p> <p>CITY OF KENT</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>
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Date: _____	Date: _____
NOTICES TO BE SENT TO: _____ _____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)	NOTICES TO BE SENT TO: _____ _____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)
APPROVED AS TO FORM: _____ _____	APPROVED AS TO FORM: _____ _____
MOUNT VERNON: CITY OF MOUNT VERNON By: _____ Print Name: _____ Its: _____ Date: _____	RENTON: RENTON By: _____ Print Name: _____ Its: _____ Date: _____
NOTICES TO BE SENT TO: _____ _____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)	NOTICES TO BE SENT TO: _____ _____ _____ () _____ - _____ (Telephone) () _____ - _____ (Facsimile)
APPROVED AS TO FORM: _____ _____	APPROVED AS TO FORM: _____ _____
SEATAC: CITY OF SEATAC By: _____	SNOQUALMIE: CITY OF SNOQUALMIE By: _____

<p>Print Name: _____ Its: _____ Date: _____</p>	<p>Print Name: _____ Its: _____ Date: _____</p>
<p>NOTICES TO BE SENT TO:</p> <p>_____ _____ _____</p> <p>() _____ - _____ (Telephone) () _____ - _____ (Facsimile)</p>	<p>NOTICES TO BE SENT TO:</p> <p>_____ _____ _____</p> <p>() _____ - _____ (Telephone) () _____ - _____ (Facsimile)</p>
<p>APPROVED AS TO FORM:</p> <p>_____</p>	<p>APPROVED AS TO FORM:</p> <p>_____</p>
<p>SUMNER:</p> <p>CITY OF SUMNER</p> <p>By: _____</p> <p>Print Name: _____ Its: _____ Date: _____</p>	<p>COWLITZ :</p> <p>COWLITZ COUNTY</p> <p>By: _____</p> <p>Print Name: _____ Its: _____ Date: _____</p>
<p>NOTICES TO BE SENT TO:</p> <p>_____ _____ _____</p> <p>() _____ - _____ (Telephone) () _____ - _____ (Facsimile)</p>	<p>NOTICES TO BE SENT TO:</p> <p>_____ _____ _____</p> <p>() _____ - _____ (Telephone) () _____ - _____ (Facsimile)</p>
<p>APPROVED AS TO FORM:</p> <p>_____</p>	<p>APPROVED AS TO FORM:</p> <p>_____</p>

EXHIBIT "A"

TO

INTERLOCAL AGREEMENT REGARDING LEGAL SERVICES

For purposes of pursuing an appeal of the 2013-18 NPDES permit issued by the state Department of Ecology on August 1, 2012, the following delineates the financial contributions to be made by members of the Governmental Entities Coalition.

Entities with a population of up to 10,000:	\$10,000
Entities with a population between 10,001 and 30,000	\$15,000
Entities with a population between 30,001 and 50,000	\$20,000
Entities with a population above 50,000	\$25,000