

**HIGHLINE WATER DISTRICT
KING COUNTY, WASHINGTON**

RESOLUTION 15-12-16F

**RESOLUTION AUTHORIZING JOINT PAYMENT AGREEMENT BY AND BETWEEN THE
HIGHLINE WATER DISTRICT, AND THE SOUTHWEST SUBURBAN AND MIDWAY
SEWER DISTRICTS (INDIVIDUALLY A "PARTY" AND COLLECTIVELY THE "PARTIES")
REGARDING CHALLENGE TO DES MOINES TAX ORDINANCE**

WHEREAS, the Parties are adversely impacted by the City of Des Moines ("City") proposal to impose an excise tax on them and are collectively acting to prevent such taxation, including litigation to bar such taxation; and

WHEREAS, each Party is or will be a party in such litigation and have a mutuality of interest in defeating the City tax proposal; and

WHEREAS, the Parties, in a voluntary manner, wish to share the cost of a joint representation by Talmadge/Fitzpatrick/Tribe ("TFT"); and

WHEREAS, the Parties have agreed to joint representation by TFT in the effort to defeat the City tax proposal.

NOW, THEREFORE, BE IT RESOLVED:

1. The Board of Commissioners authorizes the General Manager or designee to enter into a joint payment agreement (attached as Exhibit A and incorporated herein) with the Southwest Suburban and Midway Sewer Districts.

ADOPTED BY THE BOARD OF COMMISSIONERS of Highline Water District, King County, Washington, at a regular open public meeting held this **16th** day of **December 2015**.

BOARD OF COMMISSIONERS


George Landon, President


Vince Koester, Secretary


Todd Fultz, Commissioner


Daniel Johnson, Commissioner


Kathleen Quong-Vermeire, Commissioner

EXHIBIT A

JOINT PAYMENT AGREEMENT REGARDING CHALLENGE TO DES MOINES TAX ORDINANCE

THIS JOINT PAYMENT AGREEMENT (the "Agreement") is made by and between the Highline Water District, and the Southwest Suburban and Midway Sewer Districts (individually a "Party" and collectively the "Parties").

WHEREAS, the Parties are adversely impacted by the City of Des Moines ("City") proposal to impose an excise tax on them and are collectively acting to prevent such taxation, including litigation to bar such taxation.

WHEREAS, each Party is or will be a party in such litigation and have a mutuality of interest in defeating the City tax proposal.

WHEREAS, the Parties, in a voluntary manner, wish to share the cost of a joint representation by Talmadge/Fitzpatrick/Tribe ("TFT").

WHEREAS, the Parties have agreed to joint representation by TFT in the effort to defeat the City tax proposal. The Parties have a common interest and do not believe there is any conflict among them. To the extent any conflicts do exist, the Parties give their informed consent to waive any conflict. To the extent any conflict of interest arises in the future, upon receiving information that such a conflict exists, including written disclosure by TFT, the Parties agree they will in good faith waive any conflict to the extent allowed by law and waive any potential and/or actual conflicts thereto after written disclosure of the same by TFT. The parties have had the opportunity to consult with legal counsel on such joint representation. Further, the Parties agree to the joint prosecution of any lawsuit and the sharing of information in connection with such lawsuit.

NOW THEREFORE, in order to accomplish the goals set forth above and in order to memorialize the understanding of the Parties regarding their common interests in a joint effort and the terms thereof, the Parties agree as follows:

1. Joint Payment. Each Party expressly authorizes TFT and any attorneys employed thereby to represent the Parties in relation to the Lawsuit. Each Party agrees to pay fees according to the fee schedule attached to this Agreement as Exhibit A; TFT reserves the right to review and adjust such fees on an annual basis although the fees stated in Exhibit A will remain in effect through 2016. Fees and costs incurred ("Fees") will be divided evenly between all the Parties, so each will only be charged an equal pro rata amount of the Fees (should any additional party join this agreement, the Fees incurred after the additional party executes this Agreement will be further divided so that each Party pays an equal share). Legal services provided to and for the exclusive benefit of individual parties will continue to be charged to the Party requesting or benefiting from such services at the contract rate with each of the Parties. Each Party retains the right to withdraw from this payment arrangement at any time except as limited by law. Withdrawal from the payment arrangement will not affect payment obligations already incurred pursuant to this Agreement.

2. Withdrawal/Termination of Agreement.

(a) Withdrawal. The withdrawal of a Party from this payment arrangement shall not affect the ongoing validity of the Agreement as to the remaining Parties. Additional Fees incurred following the withdrawal of a Party will be shared equally among the remaining Parties.

(b) Termination. Termination of this Agreement may occur pursuant to any of the following events: (i) written agreement of the Parties, or (ii) the conclusion of the Lawsuit, including any and all appeals.

3. Counterparts. This Agreement may be executed in one or more identical counterparts, each of which shall constitute an original and all of which shall constitute one original Agreement and may be delivered by facsimile or electronically scanned transmission.

4. Miscellaneous. This Agreement shall be governed by the laws of the State of Washington.

5. Additional Parties. Additional parties in any lawsuit may become signatory Parties to this Agreement by agreement of all the Parties.

6. Authorization to Sign. Each of the undersigned acknowledges, warrants, and agrees that they are authorized to act on behalf of the respective Party for which they are signing.

7. Effective Date. This Agreement shall be effective as of the date two (2) or more Parties have executed this Agreement.

TALMADGE/FITZPATRICK/TRIBE

By: Philip Talmadge

Its: partner

Date: 12/18/15

HIGHLINE WATER DISTRICT

By: _____

Its: _____

Date: _____

SOUTHWEST SUBURBAN SEWER DISTRICT

By: _____

Its: _____

Date: _____

MIDWAY SEWER DISTRICT

By: _____

Its: _____

Date: _____

Exhibit A
Fees

Philip A. Talmadge	\$360
Thomas Fitzpatrick	\$360
Sidney Tribe	\$315

Agenda Item No.: 5.5
Agenda Date: 12/16/15
Reviewed By: M.E.

Re: Authorize Joint Payment Agreement between Highline Water District and the Southwest Suburban and Midway Sewer Districts regarding challenge to Des Moines Tax Ordinance

CATEGORY	
<i>Executive</i>	<input type="checkbox"/>
<i>Administrative</i>	<input checked="" type="checkbox"/>
<i>Engineering/Operations</i>	<input type="checkbox"/>

FINANCIAL			
<i>Expenditures?</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
<i>Budgeted?</i>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
<i>Estimated Amount:</i>		\$	<u> </u>
			Plus Sales Tax

ATTACHMENTS:

1. Resolution: 15-12-16F
2. Exhibit A – Joint Payment Agreement

COMMENTS:

The Parties are adversely impacted by the City of Des Moines proposal to impose an excise tax on them and are collectively acting to prevent such taxation, including litigation to bar such taxation.