

**HIGHLINE WATER DISTRICT
KING COUNTY, WASHINGTON**

RESOLUTION 15-12-16G

RESOLUTION AUTHORIZING JOINT PROSECUTION 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 THE CITY OF DES MOINES TAX ORDINANCE

WHEREAS, the Parties seek to challenge the enactment by the City of Des Moines ("City") of an excise tax on utility charges; and

WHEREAS, each Party is a plaintiff in such a lawsuit; each Party's claims are likely to be the same or substantially similar; and the Parties have a mutuality of interest in defending the lawsuit; and

WHEREAS, the Parties, in a voluntary manner, wish to work together on issues of common interest with regard to the lawsuit and pursue a joint representation without waving applicable rules of privilege and confidentiality vis-à-vis adverse parties; and

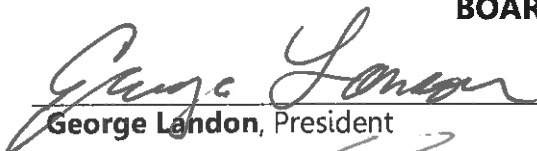
WHEREAS, the Parties have agreed to joint representation by TFT in the effort to defeat the City tax ordinance.

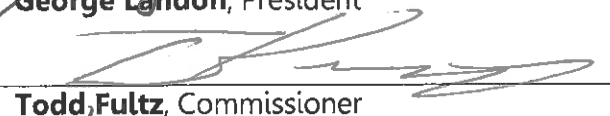
NOW, THEREFORE, BE IT RESOLVED:

1. The Board of Commissioners authorizes the General Manager or designee to enter into a joint prosecution 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


Todd Fultz, Commissioner


Kathleen Quong-Vermeire, Commissioner


Vince Koester, Secretary


Daniel Johnson, Commissioner

JOINT PROSECUTION AGREEMENT
REGARDING CHALLENGE TO CITY OF DES MOINES TAX ORDINANCE

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

WHEREAS, the Parties seek to challenge the enactment by the City of Des Moines ("City") of an excise tax on utility charges.

WHEREAS, each Party is a plaintiff in such a lawsuit; each Party's claims are likely to be the same or substantially similar; and the Parties have a mutuality of interest in defending the lawsuit.

WHEREAS, the Parties, in a voluntary manner, wish to work together on issues of common interest with regard to the lawsuit and pursue a joint representation without waving applicable rules of privilege and confidentiality vis-à-vis adverse parties.

WHEREAS, the Parties have agreed to joint representation by Talmadge/Fitzpatrick/Tribe ("TFT") in the lawsuit and have waived any potential and/or actual conflicts thereto after written disclosure of the same by counsel and have had the opportunity to consult with legal counsel.

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 as to the lawsuit, the Parties agree as follows:

1. Joint Representation. Each Party, by and through its duly authorized representative, has carefully reviewed and considered the information set forth in this Agreement as well as the joint payment agreement, and each Party acknowledges, warrants, and agrees that, after discussion, each has elected to expressly waive the

potential and/or actual conflict of interest associated with the joint prosecution of their claims against the City. Each of the undersigned expressly authorizes TFT and any attorneys employed thereby, to represent the Parties in the lawsuit. Each Party retains the right to withdraw from this joint representation at any time except as limited by law.

2. Applicability of Joint Prosecution and Privilege. Information, including but not limited to facts and/or opinions as well as any data, memoranda, interview reports, communications, and/or other information, disclosed and/or exchanged among the Parties of their respective attorneys for the purpose of asserting any common claims related to the lawsuit and/or that are necessary to carry out the purposes of this agreement and shared pursuant to this agreement (as distinguished from information shared pursuant to any rule of discovery and/or production) shall be subject to the joint defense doctrine and privilege. All such information and the Agreement shall hereafter be referred to as "Joint Information."

3. Agreement to Share Information. The Parties agree that they may share and exchange Joint Information among themselves to further the common interests of the Parties with regard to the lawsuit and their joint prosecution thereof.

4. Confidentiality. All Joint Information shall remain confidential and protected from disclosure to any Third Party (a party not a signatory to this Agreement other than (a) TFT or (b) an attorney, consultant, and/or expert engaged independently by a Party for their sole use in preparation for the lawsuit) under the joint prosecution and privilege, unless disclosure is permitted or required under Section 5 of this agreement. No sharing of information under this Agreement shall be deemed a waiver of any

otherwise applicable privilege, work product rule, and/or rule of production and/or discovery with respect to such information.

5. Agreement Not to Disclose to Third Parties. Each Party agrees not to disclose any Joint Information to any Third Party, unless the Party that generated the Joint Information consents in writing thereto prior to the proposed disclosure. Joint Counsel shall retain the right to disclose any Joint Information in furtherance of the joint representation.

A Party receiving Joint Information shall not be deemed to be in breach of this agreement if such Party communicates information to a Third Party because compelled to do so by a tribunal of competent jurisdiction and/or as may be required by law, such as the Washington Public Records Act. However, each Party agrees that it will resist any efforts by Third Parties to obtain Joint Information, unless required by law to disclose such information and will, prior to disclosure, timely notify the other Parties of (a) such efforts to resist disclosure and (b) that disclosure of Joint Defense Information has been requested.

6. Withdrawal/Termination of Agreement.

(a) **Withdrawal.** Subject to the limitations discussed in Section 1, above, any Party may withdraw from this Agreement upon the provision of seven (7) days written notice to the other Parties. The withdrawal of one Party shall not affect the ongoing effectiveness of this Agreement as between 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.

(c) Confidentiality. After termination of the Agreement and/or withdrawal of a Party, Joint Information exchanged by the Parties prior to termination or withdrawal shall remain confidential and protected from disclosure by each Party, including any withdrawing Party, consistent and in accordance with Sections 4 and 5 above.

7. 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 but one original and may be delivered by facsimile or electronically scanned transmission.

8. Miscellaneous. This Agreement shall be governed by the laws of the State of Washington. This Agreement incorporates the terms of the Letter, and is, together with the Letter, fully integrated and constitutes the complete and final agreement among the Parties with respect to the subject matter thereof.

9. Additional Parties. Additional defendants in the lawsuit may become signatory Parties to this Agreement by agreement of all the Parties.

10. 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.

11. 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: 12/8/15

HIGHLINE WATER DISTRICT

By: _____

Its: _____

Date: _____

SOUTHWEST SUBURBAN SEWER DISTRICT

By: _____

Its: _____

Date: _____

MIDWAY SEWER DISTRICT

By: _____

Its: _____

Date: _____

Agenda Item No.: 5.6
Agenda Date: 12/16/15
Reviewed By: M. E.

Re: Authorize Joint Prosecution 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>		\$ _____	Plus Sales Tax

ATTACHMENTS:

1. Resolution: 15-12-16G
2. Exhibit A – Joint Prosecution Agreement

COMMENTS:

The Parties seek to challenge the enactment by the City of Des Moines of an excise tax on utility charges.