

COMMON INTEREST / JOINT DEFENSE AGREEMENT

THIS COMMON INTEREST / JOINT DEFENSE AGREEMENT ("Agreement") is made effective as of April 24, 2023, by and among the City of Olympia ("Olympia") and the City of Tumwater ("Tumwater"), referred to collectively herein as the "Parties."

RECITALS

A. The Parties have entered into an interlocal agreement (ILA) for the planning and to pursue recommendations regarding formation of a Regional Fire Authority (RFA). The ILA was executed by Olympia City Manager, Steven J. Burney, and Tumwater Mayor, Pete Kmet, on May 19, 2021. An amended ILA was entered into on December 7, 2022, which continues in effect through October 1, 2023.

B. On or about December 6, 2022, the Parties adopted a resolution (Tumwater Resolution R2022-014; Olympia Resolution M-2400) to form a regional fire authority and to submit a plan for the same to the voters for approval on the April 25, 2023 ballot.

C. In March 2023, the Parties prepared an informational mailer ("the Mailer") concerning the proposal to form the RFA which was mailed to all boxholders within each city.

D. On or about April 18, 2023, the Public Disclosure Commission notified Olympia that it had received two citizen complaints from Arthur West and Robert Shirley alleging violations of RCW 42.17A.555 against Officials of the City of Olympia and the City of Tumwater concerning the proposed creation of the Olympia-Tumwater Regional Fire Authority District. PDC staff has opened Case Number #124392 ("the Litigation") for further assessment of the allegations listed in both complaints.

E. The Parties have engaged the law firm of Law, Lyman, Daniel, Kamerrer & Bogdanovich, P.S., ("the Law Firm") to address the allegations in the PDC complaints. The parties desire to have the Law Firm defend the allegations on behalf of both Olympia and Tumwater. Consistent with the ILA, the parties agree that the costs of defense of the Litigation will be borne equally (50%) by each of the Parties.

F. The Parties believe that the Parties have mutual interests in mounting a joint and cooperative strategy in defense of the subject matter of the PDC Complaints.

G. The Parties wish to avoid duplicative defense efforts, minimize defense costs, and promote cooperation, and further wish to avoid any suggestion or claim that they have waived any privileges by doing so. The Parties acknowledge that they have been informed concerning potential conflicts of interest in undertaking a joint representation by the Law Firm and agree that any such conflict is waived.

H. In order to pursue the Parties' common interests effectively, the Parties have concluded that the mutual interests of the Parties will be best served by: (1) discussing factual, material, mental

impressions, interviews, and other information; (2) sharing work product, including mental impressions, conclusions, strategies, opinions, legal theories, and written work product; and (3) sharing privileged or confidential information, all of which will hereinafter be referred to as "Common Interest Information."

NOW, THEREFORE, in consideration of the foregoing, the terms and conditions set forth herein, and other good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties by and through their undersigned representatives agree as follows:

AGREEMENT

I. The Parties will, at their sole discretion, share Common Interest Information subject to the intention and understanding that any Common Interest Information so shared is protected from disclosure to any third party by each of the Parties' respective attorney-client privileges, attorney work product privileges, and other applicable privileges, including the common interest privilege that arises from this Agreement.

2. It is further agreed, understood, and intended that this Agreement ensures that the exchanges and disclosures of Common Interest Information contemplated herein do not diminish in any way the confidentiality of the Common Interest Information and do not constitute a waiver of any privilege otherwise available. By disclosing information pursuant to this Agreement, neither the Parties nor their respective counsel intend to waive or diminish in any way the confidentiality or privileged nature of such information. Specifically, it is the intent of the Parties and of their respective counsel that any privilege applicable to such information and disclosure is and shall be protected and preserved, including, without limitation, the work product, attorney-client, and common interest privileges.

3. The Parties agree that all confidential documents and information exchanged subject to this Agreement are protected pursuant to the common interest doctrine.

4. The Parties agree that, to the extent they or their counsel have already been in communication or had any discussions with counsel for any of the other Parties about matters related to the Litigation, their communications, discussions, and work product have been and are subject to the common interest privilege. All such communications, discussions, and work product are now subject to this Agreement.

5. Except as provided in this Agreement or by court order, the Parties will not disclose Common Interest Information to any third party without first obtaining the consent of the other Parties to this Agreement. Common Interest Information may be shared with a Party's employees and representatives who have a need to know, with legal staff and attorneys within the Law Firm (except to the extent prohibited by any other arrangement, agreement, or ethical principle relating to conflicts of interest), and with any independent consultants and experts retained or appointed by a Party or by the Law Firm and assigned any task related to the Litigation. Any firm or individual permitted access to Common Interest Information shall be specifically advised that any and all such information is privileged and subject to the terms of this Agreement.

Common Interest Information that is shared may be used only in connection with the defense of the Litigation and not for any other purpose.

6. If any person or entity requests or demands, by subpoena or otherwise, any Common Interest Information, the City Attorney for the Party receiving the request will immediately notify the Law Firm and the City Attorney for the other Parties, and all counsel will take steps necessary to permit the assertion of all applicable rights and privileges with respect to Common Interest Information. The Parties will cooperate with each other in any proceeding relating to the disclosure of Common Interest Information.

7. In the event that any Party wishes to withdraw from this Agreement, the City Attorney for the Party desiring to withdraw shall notify the City Attorney for the other Parties in writing of the withdrawal, and this Agreement shall be terminated effective upon the receipt of such notice. Such termination shall not affect or impair the obligations of confidentiality with respect to Common Interest Information furnished pursuant to this Agreement prior to such termination, which obligation shall survive the termination of this Agreement.

8. This Agreement does not restrain any Party's independent judgment or the ability of any Party to undertake or to have legal counsel undertake any defense strategy that the Party deems appropriate. The Parties' counsel will not incur fiduciary duties to each other or to each other's clients as a result of this Agreement, and this Agreement does not create any agency or similar relationship between the Parties.

9. The Parties knowingly and intelligently waive any claim that any counsel is disqualified or otherwise precluded, due to his or her participation in this Agreement, from examining any witness, including employees and consultants of any other Party, at any trial, arbitration, deposition, or other proceeding related to the Litigation.

10. The Parties agree that all Common Interest Information received from any other Party, its counsel, or its consultants or experts retained or appointed in connection with the defense of the Litigation, shall be held in strict confidence by the receiving Party and by all persons to whom such information is revealed by the receiving Party.

11. No settlement of any claims related to the Litigation by any Party shall override or contravene the protections provided by this Agreement.

12. This Agreement shall continue in effect until it is terminated by one of the Parties as provided in paragraph 7 above.

13. This Agreement may not be modified, altered, or amended, except pursuant to an instrument in writing signed by all Parties and their respective counsel.

14. This Agreement shall be construed and interpreted in accordance with, and any and all disputes shall be governed by, Washington law.

15. At the conclusion of the Litigation, all materials containing or reflecting confidential Common Interest Information will be returned to counsel for the party that originally disseminated those materials if so requested.

16. The “Recitals” set forth in this document are incorporated by reference into this Agreement as if fully set forth herein.

17. This Agreement may be executed in one or more counterparts with original or electronic signatures, each of which shall be deemed to be an original, and together shall be one document.

Dated this _____ day of April, 2023

Mark Barber, City Attorney
City of Olympia

Dated this _____ day of April, 2023

Karen Kirkpatrick, City Attorney
City of Tumwater