

Project title: Puget Sound Clean Water Alliance Interlocal Agreement with the City of Tacoma**Council Bill #****Agenda dates requested:**

February 24, 2021

Briefing

Proposed action

Consent

Action

Ordinance

Public hearing

Yes No **Budget amendment:**Yes No **PowerPoint presentation:**Yes No **Attachments:**

Interlocal Agreement

Department(s) involved:

Public Works

Contact person:

John Rabenow

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Initialed by:*RLS*

Department head

Administration

Council President

Consideration: Interlocal Agreement**Project:** Puget Sound Clean Water Alliance Interlocal Agreement**Partner/Supplier:** City of Tacoma**Location:****Preceding action:** none**Fund:** 401, Water & Sewer Utility Fund**Fiscal summary statement:**

Participation in the Alliance is estimated at \$68,000 the first year. This includes an initial startup fee of \$43,000 and 2021 annual dues of \$25,000. The source of funds will be Fund 401 Water & Sewer and sufficient budget exists to cover the costs of this ILA. Dues for 2022-2025 are currently estimated at \$25,000 per year.

Project summary statement:

This interlocal agreement with the City of Tacoma provides a means to evaluate impacts of wastewater treatment plant discharges to Puget Sound water quality. The intent is to address present and future Puget Sound water quality issues through a collaborative approach that will identify, coordinate and fund mutually beneficial projects, activities and scientific investigation that assess the health of the Puget Sound ecosystem and the impacts of various factors on water quality. Initially the agreement provides for funding to the University of Washington's Puget Sound Institute to model the impacts of discharges from Tacoma's and Everett's treatment plants and the impacts to dissolved oxygen and nutrient levels in Puget Sound. The agreement also establishes a joint oversight board to identify and approve mutually beneficial tasks and related agreements and to carry out the objectives of this agreement.

Recommendation (exact action requested of Council): Authorize the Mayor to sign the Puget Sound Clean Water Alliance Interlocal Agreement with the City of Tacoma.

**PUGET SOUND CLEAN WATER ALLIANCE
INTERLOCAL AGREEMENT
(Five year term)**

This INTERLOCAL AGREEMENT (**Agreement**), is made and entered into pursuant to the Interlocal Cooperation Act Ch. 39.34 RCW by and among the City of Tacoma ("**Tacoma**") and the City of Everett ("**Everett**") (Tacoma and Everett, "**Originating Members**") and additional Member Agencies joining this Agreement ("**New Members**") (collectively the "**Alliance Members**" and individually "**Alliance Member**"), all of which are public agencies and have been authorized by their respective legislative bodies to execute this Agreement for the purposes set forth herein.

WHEREAS, the Puget Sound Clean Water Alliance ("**Alliance**"), which includes the Originating Members, is engaged in various projects and action items to promote a healthy Puget Sound ecosystem and further their mutual interests in present and future Puget Sound water quality issues, and

WHEREAS, the Alliance Members recognize water quality issues in Puget Sound require a collaborative approach, and

WHEREAS, the Alliance Members recognize that consultant assistance may be required from time to time to complete anticipated activities and projects, and

WHEREAS, the Alliance Members recognize that significant scientific investigation is necessary to assess the health of the Puget Sound ecosystem and the impacts of various forces on water quality, and

WHEREAS, the Alliance Members recognize that each wastewater treatment facility may be unique and consultant assistance outside of this Agreement may be required to complete anticipated activities, projects and scientific investigations, and

WHEREAS, the Alliance Members agree that consolidating efforts of the Alliance Members is more effective and efficient than pursuing such activities, projects and scientific investigations (collectively "**Tasks**") independently, and

WHEREAS, the Alliance Members agree that an administrative cost-sharing mechanism is needed to identify mutually beneficial Tasks and equitably and predictably spread the expenses of approved Tasks among the Alliance Members, and

WHEREAS, the Alliance Members believe that management and administration of Alliance Members' funds and consulting contracts for the approved Tasks by Tacoma through the oversight of a Joint Board, and deposit of such funds to a fund designated and maintained by Tacoma as treasurer, is an efficient way to implement the approved Tasks, and

WHEREAS, the Alliance Members are all public agencies, as that term is defined by the

Interlocal Cooperation Act Ch. 39.34 RCW, and have authority to enter into this Agreement to provide for the purposes set forth herein and in furtherance of the public health, safety and welfare;

NOW, THEREFORE, in consideration of the mutual benefits as described herein and for other good and valuable consideration, the Alliance Members do agree as follows:

1. Purpose and Intent. The Alliance Members have a mutual interest in addressing present and future Puget Sound water quality issues through a collaborative approach that will identify, coordinate and fund mutually beneficial projects, activities and scientific investigation that assess the health of the Puget Sound ecosystem and the impacts of various factors on water quality. The purpose of this agreement is to, (i) establish a joint oversight board (“**Alliance Board**” or “**Board**”) for the purpose of identifying and approving mutually beneficial Tasks and related agreements and carrying out the objectives of this Agreement, (ii) designate the City of Tacoma as treasurer of funds deposited with the Board by the Alliance Members and others, (iii) authorize the City of Tacoma to coordinate, advertise and host meetings of the Board as necessary to carry out business of the Board, (iv) authorize the City of Tacoma, by and through the City of Tacoma Environmental Services Department, to procure, manage and administer contracts approved by the Board to carry out approved Tasks, and (v) provide for eventual dissolution of the Board and this Agreement and the distribution of any remaining Board funds on deposit with the City of Tacoma.

2. Effective Date; Term; Extension.

2.1 Effective Date. This Agreement shall become deemed effective (**Effective Date**) as of the ___ day of _____, 2021 upon approval and execution by the Originating Members and upon such occurrence shall be binding on all signatories hereto; provided that, an Originating Member shall not have a vote until deposit of the initial membership fee which shall be due and payable as provided herein.

2.2 Nunc Pro Tunc. In the event that this Agreement is approved or executed by an Originating Member on or after the Effective Date, the Alliance Members acknowledge and agree that this Agreement shall be applied to the Originating Member and interpreted as if the Agreement had been approved and executed on or before the Effective Date.

2.3 Term. The term of this Agreement shall commence on the Effective Date and shall terminate on December 31, 2025, unless terminated sooner, or extended for an additional term, by mutual agreement of the Originating Agencies. Upon termination, any unexpended funds will be returned to the contributing Alliance Members in proportion to their cumulative contributions. For purposes of this Agreement “unexpended funds” shall mean and refer to any funds remaining in the Fund that exceed all outstanding liabilities of the Board at the time of termination. Contracts approved pursuant to this Agreement shall include provisions ensuring that the term does not extend beyond the term of this Agreement, or any extension thereof.

2.4 Extension. This Agreement can be extended for an additional five-year term (**Extension Term**) by mutual agreement of a majority of the Joint Board of the Originating Members.

2.5 Termination. Any Alliance Member may remove themselves from the Alliance by resolving prior financial commitments under this Agreement and submitting written notice to the Board of their wish to terminate their membership in the Alliance.

3. Establishment of Board. Upon the Effective Date, the Alliance Board shall be hereby established and composed of a representative of each of the Originating Members in accordance with the provisions of Exhibit A, attached hereto.

4. Administrative Structure and Agreement to Fund.

4.1 Treasurer; Deposit of Funds. The City of Tacoma is hereby designated as Treasurer for all funds received by the Board . All Funds shall be deposited with the City of Tacoma to a fiduciary fund (the **Fund**) maintained and held by Tacoma as custodian for the Board and solely for allocation by the Board as provided herein. All interest earned on funds deposited to the Fund shall be retained by Tacoma to offset the costs of administering the Fund.

4.2 Contract Management and Administration. Except as may be otherwise approved by the Board, Tacoma shall, on behalf of the Alliance, procure, manage and administer all contracts approved by the Board and pay all invoices due and owing under such contracts. The Board may adopt policies and procedures for contract procurement.

4.3 Allocation of Funds. Funds shall be used only for the work that is specified in the mutually adopted Action Item and Budget Plan described below.

4.3.1 An initial Membership fee shall be based on the Alliance Member’s total maximum month design flow capacity using the following flow range categories:

- 20 MGD+: \$43,000
- 5 – 20 MGD: \$5,500
- 0 – 5 MGD: \$1,000

4.3.2 Each signatory to this Agreement shall contribute its share of the funds identified in a mutually adopted Action Item and Budget Plan.

4.3.3 The Alliance shall use the Alliance's Rules for Conduct of Business specified in Exhibit A (attached hereto and incorporated herein).

5. Action Item and Budget Plan.

On an annual basis, the Alliance Board will adopt a formal Action Item and Budget Plan that will include a list of approved action items, together with proposed budgets for each, and a schedule of funding shares "dues" from the Alliance Members for the period covered by the Action Item and Budget Plan. This plan may be amended from time to time by the Board.

6. Obligations Not Joint and Several.

Each Alliance Member's liability for any obligation incurred pursuant to this Agreement shall be limited to the proportional funding share identified in the formally adopted Action Item and Budget Plan. The Alliance Members shall not be jointly or severally liable for any such liabilities or obligations. Any contract funded by this Agreement shall contain a provision to this effect.

7. Billing and Payment.

7.1 Tacoma shall be responsible for billing each financially responsible Party for its respective share of each formally adopted Action Item and Budget Plan upon adoption.

7.2 Each financially responsible Party shall pay Tacoma within 60 days of receipt of invoice.

7.3 The financially responsible Alliance Members represent that funds for the formally adopted Action Item and Budget Plan in Exhibit B are available for the 2021 fiscal year. To the extent that the adopted Action Item and Budget Plan requires future appropriations beyond current appropriation authority, the obligations of each of the financially responsible Alliance Members are contingent upon the appropriation of sufficient funds by that Party's authorizing body to fund the activities described therein. If no such appropriation is made, that Party shall not be required to provide funds for that fiscal year's Action Item and Budget Plan.

8. Ownership of Work Product.

All work products generated during the projects authorized under the Action Item and Budget Plan shall be the property of the Alliance Member.

9. Execution in Counterparts.

This Agreement and any amendments thereto shall be executed on behalf of each Alliance Member by its duly authorized representative and pursuant to an appropriate motion, resolution or ordinance. This Agreement may be executed in any number of counterparts, each of which shall be an original, but those counterparts will constitute one and the same instrument.

10. Indemnity and Hold Harmless.

Each Alliance Member shall protect, defend, indemnify, and save harmless the other Alliance Members, their officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, such Alliance Member's own negligent acts or omissions in the performance of this Agreement. Each Alliance Member agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents against another Alliance Member arising out of this Agreement. For this purpose, each Alliance Member, by mutual negotiation, hereby waives, with respect to the other Alliance Members only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the

event that any Alliance Member incurs any judgment, awards, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this Section, all such fees, expenses, and costs shall be recoverable from the responsible Alliance Member to the extent of that Alliance Member's culpability as fixed by a court of competent jurisdiction.

11. Entire Agreement.

This Agreement, and the exhibits attached hereto, contains the entire agreement between the Alliance Members as to the services to be rendered hereunder. All previous and contemporaneous agreements, representations, or promises and conditions relating to the subject matter of this Agreement are superseded hereby. If any terms, condition or provision of this Agreement is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. All exhibits referenced herein are incorporated into this Agreement as though fully set forth herein.

12. Sole Venue.

The Alliance Members agree and stipulate that in the event any litigation should occur concerning or arising out of this Agreement, the sole venue of any legal action shall be the Pierce County Superior Court of the State of Washington and the interpretation of the terms of the Agreement shall be governed by the laws of the State of Washington.

13. Taxes.

Each Alliance Member agrees that to the extent any taxes or charges are deemed applicable to the services performed under this Agreement, and if Tacoma is assessed, made liable, or responsible in any manner for such charges or taxes, the Alliance Members shall pay in accordance with the proportional payments for each Alliance Member, as specified in Section 4 of this Agreement.

14. Conflict of Interest.

No officer, employee or agent of any Party who exercises any function or responsibilities in connection with the planning and carrying out of the program to which this Agreement pertains, nor any member of the immediate family of any such officer, employee or agent as defined by Tacoma ordinance, shall have any personal financial interest, direct or indirect, in this Agreement, either in fact or in appearance.

15. Severability.

The invalidity or any clause, sentence, paragraph, subdivision, section or portion of this Agreement shall not affect the validity of the remainder of the Agreement.

16. Filing.

As provided by RCW 39.34.040, this Agreement shall be filed by Tacoma prior to its entry in force with the King County Department of Executive Services Division of Records and

Licensing Services, or its successor, Records and Elections, or, alternatively, listed by subject on a Principal's web site or other electronically retrievable public source.

17. No Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement. No person or entity other than a party to this Agreement shall have any rights hereunder or any authority to enforce its provisions, and any such rights or enforcement must be consistent with and subject to the terms of this Agreement.

Acceptance.

Acceptance of this Agreement by Tacoma and each Alliance Member is indicated by authorized signatures below.

Done this _____ day of _____, 2021

City of Tacoma, Environmental Services

Approved as to Form & Legality:

Michael P. Slevin III, P.E.
Environmental Services Director

CITY OF EVERETT
WASHINGTON

By: _____
Cassie Franklin, Mayor

Date: _____

ATTEST:

Sharon Fuller, City Clerk
Date: _____

APPROVED AS TO FORM:

David Hall, City Attorney
Date: _____

EXHIBIT A
Puget Sound Clean Water Alliance
Rules for Conduct of Business
Adopted as Revised 3/23/2020

1. Membership

1.1 The members of the Alliance are the designated representatives of the Originating Members listed below:

- City of Tacoma
- City of Everett

Additional representatives of Alliance Members can be named for committee assignments or as alternates; provided that, each Alliance Member shall have only one vote on items before the Board.

1.2 New Members may be added as Alliance Members; provided that, all Alliance Members shall be either a City, County or Utility District maintaining and operating a publicly owned treatment works (POTW), or an association that represents one of the above. A New Member may apply to the Alliance Board to be added as a New Member. As a condition of becoming a voting New Member, the Board may require payment of the assessment as provided at Section 4 of this Agreement, unless the applicant wishes to be a non-voting member. New Member applications may be approved by the Board Chair, and upon such approval the approved New Member shall be approved in accordance with its ordinary process and execute this Agreement and submit the approved and executed Agreement to the Board Secretary. The effective date of the Agreement as to any voting New Member shall be the date that the assessment is transmitted to the City of Tacoma for deposit to the Fund, and for non-voting members, the effective date shall be the date of execution by the New Member.

2. Voting/Financial Responsibility

2.1 To be a voting Alliance Member, the Alliance Member must be current in the payment (within 90 days of notice) of any assessments approved by the Board. If a member chooses to not make payment, they may continue to participate as a non-voting Alliance Member unless the Board by a two-thirds majority of voting members approve removal of the non-voting Alliance Member.

2.2 Alliance Member payments shall be assessed on a project by project basis. Allocation of Board Funds to a proposed project budget shall be approved by the Board based on the relative mutual benefits of each project.

2.3 Except as otherwise provided herein, adoption of any item requiring a formal vote/decision will require a simple majority of the voting members. A consensus positive vote will be the objective for all actions.

2.4 Any item that obligates a member to incur direct cost or a formal public position on a topic will require a formal vote.

3. Forum Officers and Committees

3.1 The Alliance Chair, Vice-Chair, and secretary shall be elected by simple majority of the Alliance membership every two years. The first regular meeting of the Alliance Originating Members shall be the _____ day of _____, 2021 whereupon the Originating Members shall nominate and select the Alliance Chair and Vice Chair. The Board shall at its first meeting establish a regular meeting schedule and shall meet at least annually.

3.2 The number of committees will be established through the budget process.

3.3 Committee Chairs will be appointed by the Alliance Chair and confirmed by the Alliance membership.

3.4 Any Board Member may participate in a Board Meeting in person, if in-person meetings are allowed, or electronically through a remote or virtual meeting format.

4. Representation/Interim Decisions

The Alliance Board will not participate in public discussions and will not adopt formal positions on any issues. The board will restrict its activities to the funding of investigative efforts to further the restoration and protection of Puget Sound.

5. Meeting Protocol

5.1 All meetings of the Alliance and its Committees will follow a consensus approach with Roberts Rules of Order guiding the meeting (and limiting debate, if necessary). Formal voting will be used only when required to take action. The Chair shall be the presiding officer, and the Vice-Chair in the absence of the Chair. The Secretary shall be responsible for taking action minutes of the Board meetings, maintaining records of the Board, and coordinating the meetings of the Board. All meetings of the Board shall be subject to the Open Public Meetings Act (RCW Ch. 42.30). Notice of the regular and special meetings of the Board shall be provided as required by the Open Public Meetings Act.

5.2 Time is valuable and, therefore, all members will respect the time limits for all agenda items set by the Alliance or Meeting Chair. The Chair is responsible for limiting debate and should direct alternative assignments to resolve issues between a sub-set of members if the issue is not important to a majority of the Alliance members attending.

5.3 A meeting start and finish time will be set by the Chair and followed unless a majority of the members attending agree to a modified schedule. The Chairs will establish the meeting time and location.

(End of Attachment A)

EXHIBIT B:

The overall objective of this agreement is to establish a modelling center and sustainable program of work at the Puget Sound Institute, Center for Urban Waters, that addresses regional modelling needs on access, stakeholder engagement, and model applications. This will first focus on supporting the advancement of the Salish Sea Model (SSM) across each of these key areas. A phased approach is proposed in year 1 and 2, addressing the following outputs:

- a) establish core computing and human resources;
- b) define a business model and partnerships with the utilities, wider government and non-governmental stakeholders, and collaborators that will ensure sustainable operation, and
- c) through the center, advance the Salish Sea Model (SSM) and associated regional modelling capacity and application.

1. initial activities:

- i. secure computing hardware to allow access to the SSM through UW Hyak computing cluster.
- ii. establish the business model and develop external contracting/funding mechanisms with the end-user community of the SSM (ideally with one entity that represents all interested parties, but with direct MOUs and contracting as needed), including state, federal, and tribal agencies
- iii. complete the scope and workplan for the Modelling Center and proposed SSM runs and development, including:
 1. identified uncertainties through the Marine Water Quality Implementation Strategy
 2. scenario runs of priority to the participating interested parties.

2. Second phase goals

- i. undertake prioritized modelling in the workplan
- ii. maintain SSM modeling computational capacity through system maintenance, upgrades, and documentation⁵
- iii. develop external grant/contract funding for further model development
- iv. quarterly collaborator and user-community engagement to identify SSM runs of common interest, including workshops⁶
- v. expand the number of technical staff capable of applying the SSM, both through engage university training programs and directly through the center
- vi. Provide guidance and technical staff for end-users to commission specific SSM runs⁷
- vii. advise and facilitate regional modeling interoperability, access and collaboration (e.g. interfacing watershed models with SSM⁴), providing strategic guidance to expand the impact of the modelling center and address regional modelling forums priorities.

Budget

The initial source of funding will be the Tacoma Environmental Services wastewater utility. It is expected that other entities (wastewater utilities and other interested entities) will contribute funding as the research expands and progresses. The duration of the initial phase of the project will be two years and funding will be as outlined in the budget below.

The budget shall include funding for the creation of the computer resources to effectively run and refine the Salish Sea model and resources to operate and maintain the equipment. Initial dues will cover the majority of the capital cost of setting up the Salish Sea Modelling Center. The annual dues will cover the operating cost of the modelling Center.

Deliverables

The following deliverables will be required from the Institute:

- Monthly narrative progress reports to support invoices.
- Annual review meeting including project presentations.

Modelling Center and Program ILA

Secure computing hardware to allow access to the SSM through UW Hyak computing cluster.

- Install, compile and test the parallelization performance of the Salish Sea Model on the UW Hyak supercomputer.
- Organize a technical workshop to reach consensus on how to conduct a model uncertainty analysis. Report identifying uncertainties in model outputs
- Minimum of 3 scenario runs identified and described by the City of Tacoma as part of the larger consortium-led effort
- Annual summary of research program progress and accomplishments.

Budget:

University of Washington Tacoma

Proposal to create the computer resources required to support the operational Salish Sea Model at UWT/CUW/PSI – the Alliance Share

Initial Capital Costs

Workstations with software (4)	26,000
UW Hyak Linux Cluster	70,000
Total Initial Capital Costs	96,000

Annual Operating Costs

Director salary (0.2 FTE)	25,000
Director benefits (0.2 FTE)	5,000
Hyak cluster renewal (partial)	10,000
Software licenses (partial)	2,500
Indirect costs (total minus Hyak)	10,000
Annual Operating Costs	106,073

2021 Budget	50,000
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EXHIBIT C
Puget Sound Clean Water Alliance
(DUES)
2021

Initial Dues

Large agencies (greater than 20 MGD max month rated flow =\$43,000

Small agencies (less than 20 MGD max month rated flow =\$5,500)

Agency	DUES
a. City of Tacoma (Pierce)	\$ 43,000
b. City of Everett (Snohomish)	\$ 43,000

Total **\$ 86,000**

Annual 2021 Dues (PSI Contract Only)

Large agencies (greater than 20 MGD max month rated flow =\$25,000

Small agencies (less than 20 MGD max month rated flow =\$3,000)

Agency	DUES
a. City of Tacoma (Pierce)	\$ 25,000
b. City of Everett (Snohomish)	\$ 25,000

Total **\$ 50,000**

Total 2021 Budget **\$ 136,000**