

PARTIAL SETTLEMENT AGREEMENT

1. Agreement.

This Partial Settlement Agreement (“Settlement Agreement”) is entered as a result of the parties’ settlement discussions in the lawsuit entitled *Bainbridge Ratepayers Alliance v. City of Bainbridge Island*, bearing Kitsap County Superior Court cause no. 09-2-01023-6, and Court of Appeals cause no. 39850-8-II (“Appeal”) (collectively, the “Lawsuit”). They enter this Settlement Agreement to address certain of the Lawsuit’s claims relating to the City’s proposed financing of Wastewater Treatment Plant (“WWTP”) upgrades and the bond issue in this case (i.e., the bonds and bond anticipation note authorized pursuant to City Ordinance 2009-02, as amended by City Ordinance 2009-07, and the Bond Sale Resolutions referenced therein). The Parties to this Settlement Agreement agree as follows:

2. Parties. The Parties to this Settlement Agreement are:

- 2.1. The plaintiff in the Lawsuit, namely, the Bainbridge Ratepayers Alliance. This Settlement Agreement applies to the BRA as an entity as well as its officers and directors (collectively, “BRA”) and,
- 2.2. The defendants in the Lawsuit, namely the City of Bainbridge Island (“City”).

3. Effective Date; City Council Approval Required. This Settlement Agreement does not take effect unless it is approved by the City Council and signed by BRA and the City Manager. This Settlement Agreement shall become effective as of the date that the City receives the proceeds of its first draw against the Sewer System Obligations (“Effective Date”). If no proceeds of a draw against the Sewer System Obligations are received by the City within 30 days after signature of this Settlement Agreement by the City Manager, this Settlement Agreement and all obligations hereunder shall be null and void.

4. Financing Approved.

- 4.1. This Settlement Agreement authorizes the City to issue not more than One Million Nine Hundred Thousand Dollars (\$1,900,000) in Sewer System Obligations. For purposes of this Settlement Agreement, Sewer System Obligations means revenue obligations payable solely from and secured solely by a pledge of City Sewer System revenue. Sewer System Obligations are not general obligations of the City. The City shall not use revenue of the City’s water utility or stormwater utility to pay Sewer System Obligations.
- 4.2. The proceeds of Sewer System Obligations (whether notes or bonds) shall be used exclusively by City for the following purposes:
 - 4.2.1. to pay costs associated with completing the WWTP upgrades;
 - 4.2.2. to pay costs of issuance of Sewer System Obligations;

- 4.2.3. to reimburse prior City expenditures for the WWTP project from the sewer fund in an amount not to exceed Three Hundred Thousand Dollars (\$300,000) for purposes of restoring capital reserves in that fund.

5. Release of Claims.

- 5.1. The BRA releases the City from any and all claims, demands, causes of action, actions, rights, liabilities, contract obligations, damages, costs (including attorney fees and other litigation costs), torts, suits, debts, sums of money, accountings, reckonings, bills, covenants, controversies, agreements, promises, variances, trespasses, extents, and executions whatsoever, at law or in equity or otherwise, whether direct or indirect, which the BRA either now owns or holds, or has at any time heretofore owned or held, or may in the future own or hold, against the City relating to the City's issuance of Sewer System Obligations in an amount not to exceed \$1.9 million, as described in Section 4, including refinancing or restructuring of those Sewer System Obligations (e.g., to convert short-term notes to a long-term borrowing), as long as the Sewer System Obligations remain payable only from sources as provided in Section 4.1.
- 5.2. This release shall not extend to any claims that arise out of this Settlement Agreement or out of any of the other documents executed or delivered pursuant to this Settlement Agreement.
- 5.3. The BRA represents, warrants, and agrees: (i) that it understands it may be releasing potentially unknown claims, (ii) that this release is fairly and knowingly made, (iii) that it is aware it has limited knowledge with respect to the released claims, and (iv) it specifically allocates to itself the risk of any mistake by it in entering into this Settlement Agreement.
- 5.4. Nothing in this Settlement Agreement shall be, or shall be construed as, a limitation on the City's authority to operate, maintain, improve, contract, incur debt, issue bonds or other obligations, or take any other action (collectively, "Actions") regarding the City Waterworks Utility, including the Sewer Utility, Water Utility and Stormwater Utility. The BRA reserves the right (including in the Appeal) to challenge any such Actions of the City, except as set forth in this Settlement Agreement.

6. Draw Procedure. The City agrees to provide a copy of supporting ("back up") documentation for each City draw against the Sewer System Obligations, either before or simultaneously with each draw, so that BRA may verify that the draw is being made to pay costs approved in Settlement Agreement Section 4.2.

7. City Actions.

- 7.1. The City agrees to repeal the sewer rate surcharge adopted by Ordinance No. 2009-35, as soon as practicable after the Effective Date of this Settlement Agreement. Pending repeal of the Ordinance, the surcharge will be suspended. It

will be reinstated if this Settlement Agreement does not go into effect within 30 days after signature by the City Manager.

- 7.2. The City will reimburse BRA not more than Thirty-five Thousand Dollars (\$35,000) for legal costs and fees relating to the Lawsuit, incurred prior to the date on which the City Council approves the Settlement Agreement. The legal costs and fees shall be paid only upon receipt by the City of copies of the legal bills (with attorney-client privileged information redacted) for these costs and fees. The City shall not be obligated for reimbursement of any such legal costs and fees until the Effective Date of this Settlement Agreement, and shall not be obligated for reimbursement if this Settlement Agreement does not go into effect within 30 days after signature by the City Manager. BRA will provide to the City copies of legal bills within two business days of receiving notice that the City has received proceeds of its first draw against the Sewer System Obligations. Reimbursement as provided herein shall occur prior to the use of any funds from such draw as provided in Section 4.2 of this Settlement Agreement.

8. General.

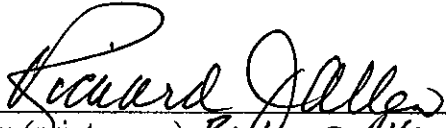
- 8.1. Time Of The Essence. Time is of the essence with regard to this Settlement Agreement.
- 8.2. Cooperation.
 - 8.2.1. The Parties agree to properly and promptly execute and deliver any and all additional documents that may be necessary or desirable to render this Settlement Agreement legally and practically effective. This paragraph shall not require the execution of any document that expands, alters, or in any way changes the terms of this Settlement Agreement.
 - 8.2.2. BRA and City agree to continue to discuss settlement of remaining issues in the Lawsuit.
- 8.3. Counterparts. This Settlement Agreement may be executed in any number of identical counterparts, notwithstanding that all Parties have not signed the same counterpart, with the same effect as if all Parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same Settlement Agreement. Facsimile signatures shall suffice as originals.
- 8.4. Waiver. Any of the terms or conditions of this Settlement Agreement may be waived, but only by a written notice signed by the Party waiving such terms or conditions.
- 8.5. Authority. The persons signing this Settlement Agreement represent and warrant that they have full right, power, and authority to enter into this Settlement Agreement, to bind the party on behalf of whom they are signing, and to grant the benefits granted by this Settlement Agreement.


- 8.6. No Admissions. This Settlement Agreement concerning the Parties' dispute over the Lawsuit's claims relating to the City's proposed Wastewater Treatment Plant bond issue is exactly that – a partial settlement of the Parties' dispute. It does not constitute, and shall not at any time or for any purpose be construed or considered as, any concession, admission, or belief on any party's part. The Parties enter into this Settlement Agreement solely for the purpose of avoiding the delays, costs, and burdens of litigation.
- 8.7. Entire Agreement. This Settlement Agreement constitutes the entire agreement of the Parties with respect to its subject matter and the claims released by this Settlement Agreement. This is a negotiated Settlement Agreement drafted by the Parties, and no ambiguity shall be construed against any Party based upon a claim that that Party drafted the ambiguous language. This Settlement Agreement supersedes and replaces all prior agreements, discussions, and representations, all of which are merged into, and superseded by, this Settlement Agreement. No Party is entering into this Settlement Agreement in reliance upon any oral or written promises, inducements, representations, understandings, interpretations, or agreements other than those contained in this Settlement Agreement. The Parties each acknowledge, represent, and agree (i) that they have read this Settlement Agreement, (ii) that they fully understand the terms of this Settlement Agreement, (iii) that they have been fully advised by their legal counsel, accountants, and other advisors with respect to this Settlement Agreement, and (iv) that they are executing this Settlement Agreement upon the advice and recommendation of their independent legal counsel.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed at Bainbridge Island, Washington effective as set forth in Section 3, above.

BAINBRIDGE RATEPAYERS ALLIANCE

CITY OF BAINBRIDGE ISLAND


 By: (print name) Richard Allen
 Its: President
 Date: January 14, 2010


 By: (print name) Lee Walton
 Its: Interim City Manager
 Date: January 14, 2010