CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 9235

A RESOLUTION finding that costs related to a petition for review to the Washington Supreme Court seeking to appeal the decision by Division I of the Washington Court of Appeals in an action brought by Puget Sound Energy are necessary expenses of the East Bellevue Community Council and shall be budgeted and paid by the City in an amount not to exceed $27,000.

WHEREAS, the Washington State Legislature enacted RCW Chapter 35.14 in 1967 creating community municipal corporations, limited authority municipalities to be formed upon approval of voters annexing from unincorporated areas to cities; and

WHEREAS, in 1969 voters in unincorporated East Bellevue approved annexation to the City of Bellevue and concurrently approved creation of the East Bellevue Community Council, a community municipal corporation; and

WHEREAS, the East Bellevue Community Council has been granted statutory approval/disapproval authority over certain ordinances of the Bellevue City Council affecting development of land within its jurisdictional boundaries; and

WHEREAS, prior to 2015 the East Bellevue Community Council has acted on a single shoreline conditional use permit application filed by the City's Utilities Department in 1988, prior to the enactment of the State Growth Management Act and revision of the City's Land Use Code; and

WHEREAS, in June 2015 the East Bellevue Community Council disapproved both a conditional use permit and shoreline conditional use permit application filed by Puget Sound Energy previously approved by the City Council upon recommendation of the Hearing Examiner in Ordinance No. 6226; and

WHEREAS, following disapproval of Ordinance No. 6226 by the East Bellevue Community Council, Puget Sound Energy filed suit against the City of Bellevue and East Bellevue Community Council in King County Superior Court as well as an appeal with the State Shoreline Hearings Board; and

WHEREAS, on September 9, 2015, the trial judge in King County Superior Court ruled that the East Bellevue Community Council had exceeded its statutory grant of authority under the plain language of RCW Chapter 35.14 in disapproving the shoreline conditional use permit and ordered the Community Council to revise Resolution No. 550 to remove reference to the shoreline conditional use permit and denied the EBCC an automatic stay of this ruling; and
WHEREAS, East Bellevue Community Council appealed these rulings to Division I of the Washington State Court of Appeals; and

WHEREAS, on November 6, 2015 the East Bellevue Community Council transmitted a letter to the City Council requesting that the Council find that the legal costs associated with pursuing that appeal are necessary expenses of the Community Council and should be budgeted and paid by the City; and

WHEREAS, prior appellate court decisions have clarified the limited scope of jurisdictional and budgetary authority of community municipal corporations under the enabling state law RCW Chapter 34.15; and

WHEREAS, although the City Council disagreed with the East Bellevue Community Council’s claim of jurisdiction over shoreline permits, the City Council found that an appellate ruling could achieve clarification on the East Bellevue Community Council’s jurisdiction and statutory authority and approved Resolution 9105 authorizing the expenditure of $15,000 for the limited purpose of achieving said clarity; and

WHEREAS, On December 18, 2015 the trial court issued a decision affirming the community council’s disapproval of the Conditional Use Permit and dismissing the Land Use appeal brought by Puget Sound Energy; and

WHEREAS, on December 21, 2015, Puget Sound Energy appealed the trial court’s decision to the Court of Appeals where both parties’ appeal issues have now been consolidated; and

WHEREAS, on February 5, 2016 the East Bellevue Community Council requested $30,000 in additional funding for this matter necessitated by Puget Sound Energy’s challenge to the dismissal of its Land Use appeal; and

WHEREAS, by Resolution 9072 on February 16, 2016, the City Council approved an additional $30,000 to the East Bellevue Community Council so that the parties could to continue the goal of achieving clarification on the East Bellevue Community Council’s jurisdiction and statutory authority; and

WHEREAS, on January 30, 2017, when Division 1 of the Washington Court of Appeals issued a detailed decision holding that the East Bellevue Community Council’s disapproval of the Puget Sound Energy Conditional Use Permit was improper and that the East Bellevue Community Council had no authority to review the shoreline conditional use permit issued by the City; and

WHEREAS, at the City Council meeting on February 13, 2017, the East Bellevue Community Council requested an additional $7,000 in funding to file a petition for review at the Washington Supreme Court and an additional $20,000 if the Supreme Court accepts review; and
WHEREAS, the City Council does not agree that the East Bellevue Community Council has jurisdiction over shoreline permits or the ability to impact projects beyond the community council's geographic boundaries, and the City Council does not believe that a petition for review filed by the community council will be granted by the Washington Supreme Court, but the City Council nevertheless agrees that the East Bellevue Community Council should be provided the opportunity to seek review in the Washington Supreme Court; and

WHEREAS, an amount not to exceed $7,000 to complete a petition for review, and an additional amount not to exceed $20,000 should the petition be granted, are reasonable amounts of litigation costs under these circumstances; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Council has considered the February 13, 2017 request for additional funding from the East Bellevue Community Council concerning a petition for review to the Washington Supreme Court seeking review of the January 30, 2017 opinion of Division I of the Court of Appeals. In the limited circumstances presented by this matter, the legal costs associated with a petition for review to the Washington Supreme Court are necessary expenses of the East Bellevue Community Council and shall be budgeted and paid by the City.

Section 2. For the reasons discussed herein, the City Council has determined that the $7,000 requested for a petition for review, and an additional $20,000 if review is accepted by the Washington Supreme Court, are reasonable. The City Manager or his designee is hereby authorized to enter into an agreement for professional services with Kathleen Haggard of Porter Foster Rorick LLP for purposes of representing the East Bellevue Community Council in this matter.

Passed by the City Council this 21st day of February, 2017, and signed in authentication of its passage this 23rd day of February, 2017.

John Stokes, Mayor

Kyle Stannert, City Clerk