

**AGREEMENT REGARDING  
COMMON INTEREST, JOINT LITIGATION  
AND  
CONFIDENTIALITY**

1. **Scope of Agreement.** This Agreement Regarding Common Interest, Joint Litigation and Confidentiality ("Agreement") pertains to meetings, discussions, investigations or legal proceedings, of any kind, relating directly or indirectly to U.S. Patent No. 6,129,893, issued on October 10, 2000 by the United States Patent and Trademark Office to Calgon Carbon Corporation, entitled "Method for Prevention Replication in *Cryptosporidium Parvum* Using Ultraviolet Light" and to any related patents regarding the treatment of drinking water with ultraviolet light ("the Calgon Patent").

2. **Definitions.**

(a) The "Matter" shall refer to the matters referenced in paragraph 1, defining the scope of this Agreement.

(b) "Client" or "clients" shall refer to each entity that signs this Agreement.

(c) "Attorney" or "attorneys" shall refer to each and every lawyer, firm and staff that participate in representation of Clients in the Matter.

(d) "Party" or "parties" shall refer to this Agreement's signatories.

(e) "Adverse Party" shall refer to Calgon Carbon Corporation or any person, personal representative or entity that has or may allege that a Client is liable in any way for conduct or actions relating to the Matter, including, but not limited to, the filing of any lawsuit against a Client seeking an injunction, damages or other relief for conduct or actions relating to the Matter.

(f) "Joint Information" shall refer to all information and materials regarding the Matter shared between or among any signatories to this Agreement, including witness statements and interview summaries, memoranda of law, factual summaries, investigative reports, expert or consultant reports, media/public relations strategies, transcript digests, documents, legal strategies, intelligence, confidences, and other secrets, unless the information

shared between parties is expressly designated in writing as being shared other than pursuant to this Agreement. Joint Information shall expressly include, but not be limited to, any legal analysis regarding the Calgon Patent prepared for or by the City of Seattle, and its Attorneys.

(g) "He" and "His" shall be used as a neutral pronoun and shall be deemed to mean "he," "his," "she," "hers," "it," and "its."

**3. Common Interest in Defense and Applicability of Confidentiality Rules, Doctrines and Privileges.** The Clients and Attorneys believe that the Matter presents legal and factual issues common to the Clients, and that there is a mutuality of interest among the Clients as a result. Clients and Attorneys wish to work together on common issues without waiving applicable rules of privilege and confidentiality.

Subject to the sole exceptions provided in paragraphs 5 and 7 of this Agreement, the parties intend, understand, and agree that the existence of this Agreement, the fact that Joint Information has been communicated or transmitted between parties to this Agreement, and all Joint Information shall remain confidential and protected from disclosure to any third party (a party not a signatory to this Agreement) by each Client's and Attorney's work-product doctrine, the common-interest doctrine, and the "joint defense doctrine" recognized in such cases as *SCM Corp. v. Xerox Corp.*, 70 FRD 508 (D. Conn.) appeal dismissed, 534 F.2d 1031 (2d Cir. 1976); *United States v. Zolm*, 809 F.2d 1411 (9<sup>th</sup> Cir. 1987); *Waller v. Financial Corp. of America*, 828 F.2d 579, 583 (9<sup>th</sup> Cir. 1987); *Hunydee v. United States*, 355 F.2d 183 (9<sup>th</sup> Cir. 1965); *Continental Oil Company v. United States*, 330 F.2d 347 (9<sup>th</sup> Cir. 1964); and *United States v. McPartlin*, 595 F.2d 1321, 1336-37 (7<sup>th</sup> Cir. 1979). No sharing of information under this Agreement shall be deemed to be a waiver of any applicable privilege, doctrine, or rule of production or discovery.

**4. Agreement to Share Information.** To further the mutual interests of the Clients, the parties agree to share and exchange, as each party deems appropriate, given their unique interests and concerns, Joint Information for the limited and restricted purpose of assisting Attorneys in protecting the rights and interests of their respective, individual Clients.

It shall be presumed that materials exchanged between the parties are exchanged pursuant to this Agreement unless the contrary is explicit and in writing. The signatories confirm that materials coming within the definition of Joint Information shared by the parties prior to the date of this Agreement relating to the Matter fall within the purview of this Agreement. Upon request of any party who contributed Joint Information, the parties agree to promptly return all such materials to the Attorney who contributed such material, including copies or summaries or excerpts of the same.

**5. Agreement Not to Disclose to Third Parties.** Each party agrees not to reveal Joint Information, except as follows:

(a) A party receiving Joint Information may communicate that same information to a third party (a party not a signatory to this Agreement) with advance, written consent of the party that contributed it to the joint litigation effort.

(b) A party receiving Joint Information shall not be deemed to be in breach of this Agreement if that party communicates information because required to do so by (i) state or federal statute, administrative regulation or case law designating particular information as subject to public access or disclosure; or (ii) order of a court of competent jurisdiction or administrative officer with authority to order release of the information. Each party agrees that if it receives any summons, subpoena, order, or similar process, or request to produce information or materials which includes information or material received under this Agreement, it will immediately notify all other parties and provide not less than ten (10) days notice before production, in order to permit other parties to intervene. If ten days notice cannot be provided, because of the return date of the process, the party upon which the demand or request is made agrees to bring a motion to stay the proceedings in order to allow provision of ten days notice to other parties.

**6. Each Client is Represented By His Own Attorney Only.** Each Client signing this Agreement understands and acknowledges that the Client is represented exclusively by the Client's own Attorney. While the undersigned Attorneys have a duty to preserve the

confidences disclosed to them pursuant to, and solely to the extent specifically required by, this Agreement, the Attorneys will not act for any party other than their own Clients. This Agreement itself does not and is not intended to create any attorney-client relationship between a Client and any other Client's Attorney. Each Attorney to this Agreement owes an uncompromising duty of loyalty to, and a duty to zealously represent, his own Client and owes no such duties to any other party to this Agreement. Thus, before the Matter concludes, each Attorney may take action that may be contrary to the interest of other parties to this Agreement. These actions may include, but are not limited to (a) negotiating an agreement with an Adverse Party regarding the payment of royalties with respect to the Calgon Patent and (b) generating and disclosing evidence or information to an Adverse Party (apart from information protected by this Agreement).

**7. Client Consent to Use of Information Obtained Independently of, or Derived From, Joint Information.**

(a) Each party to this Agreement understands and agrees that information obtained independently of Joint Information may be used by any other party without further consent.

(b) If a party testifies in any future trial or proceedings (regardless of whether testifying on the party's own behalf or upon request by another), that party may be, and hereby consents to being, cross-examined by the Attorney for any other Client to this Agreement and further consents to use in such cross examination by the other party's Attorney of any information obtained independently of, or derived from, Joint Information.

(c) Each Client knowingly waives any objection — including any claim of conflict of interest — to cross-examination of the Client at any proceeding by any Attorney to this Agreement (other than his or its own Attorney) based upon information that may be disclosed under the terms of this Agreement.

(d) The parties agree not to claim or assert or support a contention that an Attorney for another Client has a conflict of interest in his representation of a Client based

upon his entering into, or sharing information pursuant to this Agreement. See paragraphs 4 and 6 above. This waiver of any potential conflict of interest shall remain binding and effective even after a party withdraws from this Agreement.

(e) Each Client to this Agreement confirms that his or her Attorney has carefully explained the provisions of paragraphs 4, 5, 6 and 7 and is entering into this Agreement — including the consents and waivers set forth in this paragraph — knowingly and with a full understanding of the issues and circumstances surrounding the above consents and waivers.

**8. Return of Joint Defense Materials Upon Withdrawal.** Each signatory to this Agreement has the right to terminate his or her participation at any time, at his or her discretion without any stated reason. Upon withdrawal, the withdrawing Client and his Attorney shall, upon request, return all Joint Material to the respective Attorneys who contributed such material, including copies or summaries or excerpts of the same. Withdrawal from this Agreement shall not operate as a waiver or authorize violation of this Agreement. A withdrawing party remains bound to maintain the confidentiality of information received under this Agreement.

**9. Not an Agreement to Violate Any Law.** All Clients and Attorneys acknowledge that this Agreement is in no way intended to unlawfully interfere with any lawful proceeding, nor is participation in this Agreement intended to violate law, or intended to encourage the violation of law.

**10. Sharing of Information Does Not Create Privilege Regarding Facts That Are Not Otherwise Privileged.** The parties recognize and agree that facts and other communications not otherwise privileged from disclosure shall not gain any privilege simply because such facts and other information may be shared in a joint communication.

**11. No Agency Relationship Created.** This Agreement shall not create any agency or similar relationship among the parties. No party shall have the authority to waive any applicable privilege or doctrine on behalf of any other party. Nor shall any waiver of any

applicable privilege or doctrine by the conduct of any party be construed to apply to any other party.

**12. Injunctive Relief Available.** Each party agrees that irreparable harm will result if any Party or Attorney communicates, or attempts to communicate, Joint Information to any third party in violation of this Agreement.

**13. Entire Agreement.** This Agreement constitutes the entire agreement between the parties. Any prior agreements, understandings, or representations among the parties regarding the subject matter of this Agreement are superseded by this Agreement. No amendments or modifications to this Agreement shall be binding unless they are in writing and signed by all parties, including amendments or modifications adding other Clients to this Agreement.

**14. Substitution of Attorneys; Successors.** This Agreement shall automatically apply to lawyers who substitute for or are associated with Attorneys participating in the representation of Clients. This Agreement shall not be subject to abrogation by any heir, assign or successor in interest to any Party, nor shall such heir, assign or successor in interest waive any privilege or doctrine with regard to Joint Information received pursuant to this Agreement.

**15. Agreement Fully Explained.** Each Attorney has fully explained the terms of this Agreement and is fully satisfied that the Client understands the terms of this Agreement and agrees to abide by these terms, and that the Attorney is authorized by the Client to execute this Agreement. Each Client represents that he understands both the benefits to be gained by participation in this Agreement, and the potential detriments, and each signatory below has determined, with the full advice of their respective Attorney, that the potential benefits from this Agreement outweigh the potential detriments.

**16. Severability.** In the event that any provision(s) of this Agreement shall be held by any court of competent jurisdiction to be illegal, void, or unenforceable, the illegality or

unenforceability of such provision(s) shall neither affect nor impair the enforceability of any other provision of this Agreement.

**17. Counterparts.** This document may be executed in counterparts, each of which shall be deemed an original but all of which together will constitute one instrument binding upon all parties hereto, notwithstanding that all of such parties may not have executed the same counterpart. One or more parties may execute a separate signature page, which may be appended to a single original of this Agreement.

**SIGNATURES OF COUNSEL FOR PARTIES:**

\_\_\_\_\_  
Ruth M. Spetter  
Of Attorneys for the City of Portland

Dated: \_\_\_\_\_

\_\_\_\_\_  
Of Attorneys for the City of

Dated: \_\_\_\_\_

\_\_\_\_\_  
Of Attorneys for the City of

Dated: \_\_\_\_\_

\_\_\_\_\_  
Of Attorneys for the City of

Dated: \_\_\_\_\_

\_\_\_\_\_  
Of Attorneys for the City of

Dated: \_\_\_\_\_

\_\_\_\_\_  
Of Attorneys for the City of

Dated: \_\_\_\_\_

\_\_\_\_\_  
Of Attorneys for the

Dated: \_\_\_\_\_

\_\_\_\_\_  
Of Attorneys for the

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM  
City of Portland *[Signature]*  
CITY ATTORNEY



# **ORDINANCE NO. 175913**

\*Authorize Agreement with other public entities for review of water disinfection option.  
(Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The cost of water purification is an issue of high importance to the City and other public water providers.
2. There is an efficient and highly cost effective process for water treatment specifically designed to improve the effectiveness of disinfection.
3. This process is not unusual and whether the process can be patented is an issue which the City and other public water providers need to know.
4. Any number of municipal water providers have interests in common with the City in the determination of this patent issue. Entering into a joint agreement would make it possible for the City, and other municipal water providers, to explore the issue, through joint communication, information sharing, and whatever other steps may be indicated up to and including litigation. It is anticipated that there will be common legal and factual issues involved.
5. The residents of the City of Portland would benefit from the City's ability to participate in the joint review, and possible litigation, of the patent issue. It would be efficient and most effective if the several different municipal water providers could, with confidence, share what information they may have or may develop, while preserving all protected, confidential privileges in the process of review and for litigation.
6. The parties to the agreement want to take every proper, legal and ethical step to permit their respective counsel to share and exchange strategies, legal theories, confidences and other secrets, information and documents.
7. The attached Agreement is intended to allow the parties to share confidences under the concept of joint defense/interest privilege and work product immunity as recognized by federal/state law, preserving privileges as to any lawyer/client communication or as to their counsel's work project.

NOW, THEREFORE, the City Council directs:

- a. The City Attorney is authorized to enter into an Agreement Regarding Common Interest, Joint Litigation and Confidentiality providing for the confidential sharing of attorney work product and privileged information substantially in conformance with Exhibit A to this Ordinance.

Section 2. The Council declares that an emergency exists because the patent should be investigated as soon as possible so that the parties will know what their treatment options are; Therefore, this ordinance shall be in full force and effect from and after its passage by Council.

Commissioner Erik Sten  
Ruth M. Spetter: rms  
August 24, 2001

Passed by Council: SEP 05 2001

**Gary Blackmer**  
Auditor of the City of Portland

By: 

Deputy

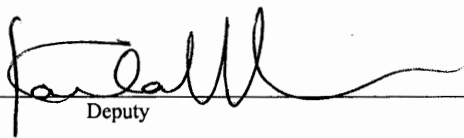
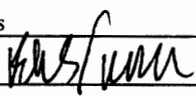
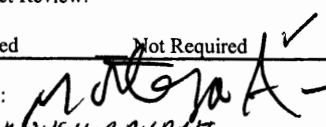
1070

Agenda No.

## ORDINANCE NO. 175913

Title

\*Authorize Agreement with other public entities for review of water disinfection option. (Ordinance)

INTRODUCED BY	DATE FILED: AUG 30 2001
Commissioner Erik Sten	Gary Blackmer Auditor of the City of Portland
NOTED BY COMMISSIONER	By:  Deputy
Affairs	For Meeting of: _____
Finance and Administration	ACTION TAKEN:
Safety	
Utilities	
Works 	
BUREAU APPROVAL	
Bureau: Water Bureau	
Prepared by RSpetter:ks Date August 24, 2001	
Budget Impact Review:	
Completed <input type="checkbox"/> Not Required <input checked="" type="checkbox"/>	
Bureau Head:  MORT ARDUSHIRAVANT INTERIM ADMINISTRATOR	

AGENDA	FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
			YEAS	NAYS
Consent <input checked="" type="checkbox"/> Regular	Francesconi	Francesconi	<input checked="" type="checkbox"/>	
NOTED BY	Hales	Hales	<input checked="" type="checkbox"/>	
City Attorney RMS	Saltzman	Saltzman	<input checked="" type="checkbox"/>	
City Auditor	Sten	Sten	<input checked="" type="checkbox"/>	
City Engineer	Katz	Katz	<input checked="" type="checkbox"/>	