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**MEMORANDUM OF AGREEMENT
BETWEEN KING COUNTY AND THE CITY OF WOODINVILLE REGARDING
MITIGATION FOR THE BRIGHTWATER PROJECT**

WHEREAS, capacity to treat the wastewater generated within the King County regional wastewater treatment and conveyance service area is important to the quality of life of Puget Sound residents, regional economic stability, and environmental protection; and

WHEREAS, King County has determined that additional wastewater treatment capacity is needed within its service area, and that a new wastewater treatment plant facility is the best alternative to provide such capacity; and

WHEREAS, in November 2003 King County issued its Final Environmental Impact Statement (FEIS) regarding the Brightwater Regional Wastewater Treatment System ("Brightwater") and the County also issued Addenda 1-4 and a Supplemental Environmental Impact Statement (SEIS) in July of 2005; and

WHEREAS, in December 2003 the King County Executive selected the Route 9 – 195th Street System as the final alternative; and

WHEREAS, the selected system includes the construction of a new regional treatment plant within the proposed annexation area of the City of Woodinville, deep tunnel conveyance facilities that pass beneath a portion of property owned by the City of Woodinville and additional properties within the City, a marine outfall and four (4) portal sites within other local jurisdictions. The Brightwater Project is a Regional Essential Public Facility; and

WHEREAS, on or about April 8, 2004 the City of Woodinville and King County entered into a Memorandum of Agreement regarding principles for addressing mitigation for the Brightwater project.

WHEREAS, the City of Woodinville and King County now desire to address the specific concerns and issues raised, by entering into this Agreement which shall govern the development, use and mitigation of environmental impacts associated with the development of those portions of Brightwater, which are located or may have impacts within the City of Woodinville.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. Based on the parties' long and productive working relationship and this Agreement, the City of Woodinville commits to grant to King County the easement required for the construction of the deep tunnel conveyance for the Brightwater System and described in Attachment A to this agreement. Both parties will address, quickly and effectively, any problems that arise during the construction processes. Both parties agree to diligently perform the work under this Agreement to completion and in accordance with any schedules specified herein or required by law.

King County agrees to maintain direct contact with City officials engaged in necessary review of the project and to minimize reliance on contracted consultants for such purposes. The parties recognize that time is of the essence in the performance of this Agreement.

2. Design, Construction and Operation of Brightwater Facilities

As stated in the April 8, 2004 Memorandum of Agreement between King County and the City of Woodinville, King County will work with the City of Woodinville to address the potential construction impacts of traffic, noise, dust, vibration and wetlands protection associated with Brightwater activities within and adjacent to the City. King County commits to consulting with and allowing the City of Woodinville review of the proposed permitting submittals to Snohomish County regarding the treatment plant site during the Snohomish County review period. King County also commits to consulting with and involving, as appropriate, the City staff in the planning and implementation of public involvement activities that will occur related to the proposed Brightwater construction activities at the treatment plant site.

King County agrees to construct the Brightwater facilities in accordance with all applicable federal, state and local laws and regulations, including conditions imposed by agencies with jurisdiction to address the potential impacts of traffic, noise, dust, vibration and wetland protection, as well as the conditions of this Agreement.

The parties shall also comply with any elements of the April 8, 2004 Memorandum of Agreement unless modified or superceded in this agreement.

Vibration impacts to neighboring structures and public utilities are not expected from construction or tunneling activities on the portal sites or along conveyance routes based on the geotechnical studies that have been completed to date. Nonetheless, if residents, businesses or the City of Woodinville should experience any vibration, King County commits to a thorough evaluation using vibration monitors to isolate the cause and define how to reduce or eliminate the source if it originates from Brightwater construction. King County will mitigate appropriately any impacts from vibration attributable to the construction or maintenance of the Brightwater facilities on public or privately owned properties.

No pile driving is required within the City of Woodinville for conveyance activities. At the treatment plant site, within the proposed annexation area of the City, limited pile driving will be required (at this time it is only planned for use on small boardwalk sections within the public use areas).

3. Facilities to be Developed within the City of Woodinville

A. Conveyance Tunnel

The extent of construction within the City of Woodinville will be limited to a deep underground conveyance tunnel segment of approximately .94 miles in length (2,660 lineal ft of that length in state owned right of way beneath SR 522 and 2,280 ft. in local right of way and land area) with a depth that varies from 50 to 180 ft. and an average depth of 95ft. beneath the surface. The watertight concrete conveyance tunnel (10" wall thickness) will contain two influent pipelines 66

and 48 inches in diameter and one effluent pipeline of 84 inches in diameter and a reclaimed water pipeline of 27 inches in diameter. These pipes will be set in cellular concrete within the watertight concrete conveyance tunnel.

4. Construction Activities within the City of Woodinville

The County anticipates no above ground construction within the City of Woodinville.

Underground tunneling activities will be carried out on a 24-hour per day basis, a maximum of 7 days per week (normally 6 days per week Monday – Saturday). Tunnel spoils will be brought to the surface at the Portal 41 site within the City of Bothell.

5. Permits and Approvals

No permits or approvals beyond the easement for approximately 750' ft. of below grade construction of conveyance tunnel are required from the City for the conveyance tunneling work that will occur beneath the City of Woodinville. The treatment plant site is within Snohomish County's jurisdiction and requires no permits or approvals from the City of Woodinville.

6. Noise

Understanding that noise related to construction and/or operation of the proposed Brightwater plant is of paramount concern to the City, King County has hired an acoustic design expert to assess probable significant adverse impacts and develop design alternatives to address these probable impacts. Ultimate design and construction will meet all applicable Snohomish County noise codes (the current permitting jurisdiction for the treatment plant site) during normal working hours of construction and during operation of the proposed facilities. King County will work to reduce noise levels during any extended hours of construction to the greatest extent possible. King County will comply with the regulated noise levels and will monitor for compliance on an ongoing basis to demonstrate performance.

7. Operations

A. Odor Control

Odor control is of paramount concern to King County and the City of Woodinville. To address this concern, King County has voluntarily committed itself to an odor control standard of "no detectable odor at the property line" for all elements of the Brightwater System. This standard will be met at the property lines, 24 hours a day, 365 days a year. King County has committed to Odor Standards and Long-term Odor Control in the Development Agreement between King and Snohomish Counties, detailed in Section 3.1 of that agreement, for the treatment plant site.

B. Emergency Operations

King County shall develop and adopt emergency operations and spill response plans for the Brightwater Treatment system prior to the opening of the proposed Brightwater facilities and will present the City of Woodinville with a copy of these plans prior to opening.

8. Public Involvement Commitments

King County has demonstrated its commitment to involving the public in wastewater projects during the Brightwater Siting Project and many other projects. King County seeks to offer people many ways to get involved to match their level of interest. Community relations will be key to Brightwater construction within the City of Woodinville and within the proposed annexation area of the City. King County commits to continuing its ongoing work with the City of Woodinville and its staff, as well as, adjacent residences and businesses. King County will time events and publications around project milestones, rather than specific timeframes. See Appendix B for details of the planned public involvement process.

9. Mitigation for Construction and Operational Impacts

King County commits to addressing the potential construction and operational impacts associated with Brightwater activities and facilities at the treatment plant site and along the conveyance route.

Upon the City of Woodinville's approval of the required easement for Brightwater conveyance construction (detailed in Attachment A) and approval of the Binding Site Plan and issuance of the permits described in Sections 4.1 through 4.8 of the Development Agreement between King and Snohomish Counties, the City of Woodinville will be provided within 120 days the mitigation described herein, and this mitigation shall constitute full and complete mitigation for all direct and indirect impacts caused by the construction and operational uses planned at, and associated with all elements of the Brightwater Wastewater Treatment System within and/or impacting the City of Woodinville. Provided, that nothing herein shall be construed as limiting the City's rights against King County pursuant to the provisions of paragraph 11, as applicable.

A. Traffic Control and Transportation Management

King County agrees to provide \$500,000 for traffic, transportation and roadway mitigation related to the Brightwater project (direct and indirect), including all of the construction activities described in this Agreement.

These moneys will constitute full and complete funding for all traffic, transportation and roadway mitigation pre- and post-construction required within the City of Woodinville for the Brightwater Project and all of the construction activities described in this Agreement. The allocation of these funds to specific mitigation solutions shall be made by the City after consultation with, and with the consent of King County's Brightwater staff, such consent shall not be unreasonably withheld.

If major unforeseen circumstances that require spending in excess of the allotted funding for traffic, transportation and roadway mitigation are encountered in the required pre or post

roadway construction activities directly related to the Brightwater project, then King County commits to working with the City of Woodinville to reach a fair and appropriate resolution to the particular situation.

Any proposed truck haul routes required within the City of Woodinville for construction activities at the treatment plant site will be submitted by King County or King County's selected contractors before the hauling activities begin to the City for review and determination.

B. Additional Brightwater Project Mitigation for Construction and Operational Impacts

In addition to the specific mitigation described for traffic improvements, King County agrees to provide to the City \$1,400,000 for trail improvements to the Little Bear Creek Trail system (of which the City has begun development) as further mitigation to address all of the construction and operational impacts related to the Brightwater project facilities within or adjacent to the City of Woodinville. These trail improvements will help to enhance and create safe pedestrian connections between Woodinville and the Brightwater treatment plant site and its associated public use areas that will be developed on that site. The allocation of these funds to specific trail improvements in this system shall be made by the City after consultation with, and with the consent of King County's Brightwater staff, such consent shall not be unreasonably withheld.

C. Reclaimed Water Availability

As a result of the construction of the Brightwater system, the County intends to generate reclaimed water that can be used for irrigation or industrial uses. The County will be initiating a regional water supply planning process that will integrate the use of reclaimed water into a comprehensive water supply plan. The regional plan will include an evaluation of the feasibility of different approaches to delivering reclaimed water and will address policy issues such as contracting relationships between the County and local water purveyors, financing, and rates. The City will be kept informed as policy discussions continue on regional water resources, long term water supply capacity, and the use of reclaimed water. The County will also share technical information regarding the use and distribution of reclaimed water within the Brightwater Service Area.

10. Guidelines for Dispute Resolution

The parties shall use reasonable efforts to mediate any dispute arising under this Memorandum of Agreement. In the event of such a dispute, each party shall designate, in writing, not more than three (3) candidates it proposes to act as a non-binding mediator within ten (10) days following notification of a dispute. If the Parties cannot agree on one of the mediators from the combined list within five (5) days, then the Parties shall promptly meet and select a mediator by blind draw. Upon selection of the mediator, the Parties shall within thirty (30) days or as soon thereafter as possible, meet and engage in a mediation of the dispute with the assistance of the mediator. The cost for the mediation services shall be borne equally between the parties, each party paying one-half of the cost. The mediator shall determine reasonable procedures. Testimony and briefing, if any, provided to the mediator shall be inadmissible in any subsequent court proceedings. If mediation fails to resolve the dispute, the Parties may thereafter seek

redress in court. Venue and jurisdiction shall lie with the King County Superior Court in Seattle, Washington.

11. Mutual Indemnification

Each party to this Agreement shall be solely responsible for its own negligent and/or wrongful acts or omissions, and those of its own agents, employees, representatives or subcontractors, to the fullest extent allowed by the laws of the State of Washington. Each party agrees to protect, indemnify and save the other Party harmless from and against any and all such liability for injury or damage to the other party or the other Party's property and also from and against all claims, demand and causes of action of every kind and character arising directly or indirectly, or in any way incident to, in connection with or arising out of work performed under the terms hereof, caused by its own fault or that of its agents, employees, representatives or subcontractors. Each party specifically promises to indemnify the other party against claims or suits brought under Title 51 RCW by its own employees, contractors or subcontractors, and waives any immunity that it may have under that title with respect to, but only to, the limited extent necessary to indemnify the other party. Each party shall also indemnify and hold the other party harmless from any wage, overtime or benefit claim of its own employee, agent, representative, contractor or subcontractor performing services under this Agreement. Each party further agrees to fully indemnify the other party from and against any and all costs of defending any such claim or demand.

12. Regulatory Authority Preserved

Nothing herein shall be construed as a waiver, abridgment or other limitation of the City of Woodinville's or King County's regulatory authority under state law, including the status of Brightwater facilities as essential public facilities under chapter 36.70A RCW, which the City and King County hereby reserve in full.

13. Termination

Unless terminated earlier through the mutual, written consent of the parties, this Memorandum of Agreement shall terminate upon completion of the tasks described herein. Notwithstanding the termination of this MOA, the provisions of Sections 10 and 11 (guidelines for dispute resolution and mutual indemnification) shall survive such termination.

14. Modification of MOA

This Memorandum of Agreement may only be modified by an amendment in writing signed by each party. If both parties do not agree to an amendment of the MOA then the parties may mediate concerning the amendment only if both parties agree to so mediate.

15. No Third Party Beneficiary

Nothing in this Agreement shall be construed to create any rights in or duties to any third party, nor any liability to or standard of care with reference to any third party. This Agreement shall not confer any right, or remedy upon any person other than the parties hereto. This Agreement shall not release or discharge any obligation or liability of any third party to any party herein.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement on the date set forth below.

KING COUNTY

By: Paul Besonick

Dated: 1/13/06

Title: _____

Approved as to form : Wanda P. Brumby
Prosecuting Attorney

CITY OF WOODINVILLE

By: Ronald Rose

Dated: 12-19-05

Title: City Manager

Approved as to form: [Signature]
City Attorney

APPENDIX A –

**EASEMENT TO BE CONVEYED BY THE CITY OF WOODINVILLE TO KING
COUNTY**

Appendix B

Public Involvement Commitments

A King County public involvement staff person shall be assigned to provide community relations support.

Permitting/Mitigation process (2005)

Publications:

- Project newsletter (approximately quarterly)
- Media Relations – local and regional media

Construction process (2006-2010)

Community Relations Planning:

- Community Relations plan developed around site-specific issues and revised as needed throughout the construction process.

Public Interactions:

- Community kick-off meeting.
- Community meetings at key milestones.
- 24-hour hotline beeper
- Visits with individuals and groups of neighbors to resolve issues and conflicts as they arise.
- Established team protocols for responding to community concerns.
- King County will share issues raised by the public and their resolutions relating to the City of Woodinville with City staff.

Publications

- On-Site Signage listing project contact information for all above ground construction
- Project newsletter (approximately quarterly)
- Media Relations – local and regional media
- Construction update flyers notifying neighbors of key progress points and changes
- Construction updates posted on County's web site and available to City of Woodinville to post.
- Information about County claims process provided as needed

King County commits to consulting with and involving, as appropriate, the City of Woodinville staff in the planning and implementation of public involvement activities that will occur related to the proposed Brightwater construction activities at or near the treatment plant site and along conveyance tunnel beneath or near the City of Woodinville.