STAFF REPORT

TO: CITY COUNCIL

FROM: PETE ROSE, CITY MANAGER

SUBJECT: BRIGHTWATER INTERLOCAL AGREEMENT

FOR MEETING OF: DECEMBER 5, 2005

ISSUE: Shall the City Council approve an Interlocal Agreement with King County on the subject of the Brightwater Wastewater Treatment System that:

- Updates the previous 2004 agreement in areas where changes are proposed;
- Provides for an easement to allow deep tunneling beneath Rotary Community Park;
- Mitigates Woodinville for impacts of the project?

STAFF RECOMMENDATION: Approve agreement.

POLICY DECISIONS: This is a decision as to whether to use the Interlocal Cooperation Act to make an agreement between two government agencies. This decision represents the final terms under which the Brightwater project will affect Woodinville and defines the rights or concessions received by Woodinville. The elements of the agreement are voluntary. The changes in the previous agreement attempt to keep the spirit of the agreement under changed conditions. The mitigation would make Woodinville one of only five agencies with the most impact from this project to receive payments. The City of Woodinville holds the land for the requested easement and does not have to voluntarily give it up, but King County has the right to condemn the easement and a deep tunnel easement is not particularly valuable itself.

POLICY CONTEXT: The Brightwater wastewater treatment system is an essential public facility under the Growth Management Act. Prior efforts to influence the project have been through the State Environmental Policy Act (SEPA) during the DEIS, FEIS and SEIS processes. Although the plant site is in the Woodinville Urban Growth Boundary, the current underlying jurisdiction is Snohomish County. Snohomish County has reached a global settlement with King County that accepts the adequacy of the EIS with the exception of an additional seismic trench. The current Woodinville agreement with Brightwater

provides a voluntary window into the regulatory process and preserves its regulatory authority should Woodinville become the underlying jurisdiction via annexation.

BACKGROUND:

1. Third Treatment Plant: Additional treatment capacity was called out in the Metropolitan King County Wastewater Comprehensive Plan. This was presumed to be a third treatment plant in north King County or south Snohomish County and after a lengthy process in 1998 and 1999, the building of a third plant was confirmed and planning for the site and system began.

2. Site Selection Process: King County created a site selection process that included an Executive's siting advisory committee on which the City of Woodinville had a seat. This group advised as to the site selection criteria and the application of them. It did not participate in the selection or dropping of sites. This was done by the Wastewater Division and its consultants. The process went from more than 100 potentially qualifying sites to a final 7 that were proposed for active consideration. One of the final 7 sites was inside incorporated Woodinville, on the combined surplus County and Sirkin sites. The surplus County site was in late stage planning for what became the Greenbrier housing project. Woodinville quickly worked through the County and housing interests to get consideration of the site dropped. King County put it through an accelerated review under established criteria and dropped it.

3. Current Agreement: In April of 2004, the City entered into an Interlocal agreement with King County. It provided for several things of interest to the City of Woodinville. A copy of the agreement is shown as Attachment A.

    a. Odor Control: Promises to build the odor control system (no odors at property line 24/365) to meet the standards outlined in the FEIS;

    b. Odor Reserve Fund: Provides process for an odor reserve fund and gives Woodinville a seat on the air quality board;

    c. Transportation: Commits to a transportation management plan during construction and a process for permitting future biosolids truck trips within Woodinville should regular haul routes not be available;

d. Guidelines for input on construction impacts and emergency management planning;

e. Mitigation: A seat for Woodinville at mitigation discussions;

f. Review Funding: Provided for billing for review time. This is important to provide for quality review;

g. Acceptance of FEIS: A key point in this agreement was the City of Woodinville agreement to accept the findings of the FEIS as adequate. This was based on the review of the City's consultant, DMJM + Harris, which gave an adequate finding, with the qualifier that the odor system was adequately disclosed and should meet the standard, except for the potential of occasional human errors.

FACTS AND FINDINGS:

1. Changes Since Agreement: There are several things that have changed that drive the next agreement. Key items are described herein.

   a. Odor Control: The odor peer review panel has been formed and has determined that Brightwater should consider at least a partial bio-scrub system instead of a chemical scrubber system. The previous agreement specifically addresses chemical scrubbing. The agreement includes a finding that the proposed new design will continue to meet the 24/365 standard. This new technology and how modeling shows that it meets the standard will be presented by the Brightwater team earlier in the meeting.

   b. Seismic Event Rupture Containment: The challenge of the FEIS for lack of sufficient disclosure for seismic impact led to the issuance of a supplemental EIS (SEIS). This document expressed highly unlikely but potentially catastrophic discharge scenarios into Little Bear Creek. The City of Woodinville expressed strenuous objections in its draft SEIS comments. The final SEIS was issued with statements in several sections that King County would work with the City of Woodinville to resolve the concerns. The Brightwater design is being altered to capture all potential above-ground spillage on site. This change will be presented by the Brightwater team earlier in the meeting. While not ideal, this appears to be acceptable from the standpoint of the Little Bear Creek and was accepted by the Snohomish County agreement.

c. Easement Needed: The design of the conveyance system has revealed that the deep tunnels can be run beneath state and public rights of way with the exception of a sweep turn beneath Rotary Community Park. An easement is needed for this pathway. A deep tunnel easement that does not break the surface is not considered a high value item. It can be condemned by King County. It is thought by staff to be better as part of a voluntary package that brings other benefits. The easement document is included as Attachment B.

d. Mitigation Settlements: Woodinville has been offered a mitigation payment. All other jurisdictions that will be mitigated have executed agreements with King County. Those include Shoreline ($750,000 plus conversion of remnant around portal to park property and spoils leave portal by rail or barge, Kenmore ($500,000 plus remnant land around portal for park property), Bothell ($1.0 million traffic mitigation, $2.0 million community mitigation plus rebuild section of pipeline – longest construction period and highest amount of spoils trucked from property) and Snohomish County ($70 million in named mitigation improvements as listed as Exhibit B to Attachment C, Settlement and Release).

e. Global Settlement with Snohomish County: The major difference since the April 2004 agreement is the settlement of the series of four outstanding legal and GMA actions between King County and Snohomish County. By the settlement of the lawsuit over the adequacy of the EIS, Snohomish County has now accepted the adequacy of it, with the seismic exception noted below. This has provided for the permitting of the construction of the treatment plant facility by the underlying jurisdiction, Snohomish County. This settlement included a development agreement with binding site plan in place of the conditional use permit. The binding site plan is currently in the submission phase and has been made available to city staff for review and comment as consistent with the 2004 agreement. Two key provisions of the agreement as it affects City of Woodinville interests are seismic trenching and spill containment:

    i. Seismic Trenching: There will be an additional trench dug in the vicinity of the north and south chemical storage buildings (Section 3.2 of development agreement, Exhibit A of Attachment C to this report). The trench is concerned with the placement of the two chemical storage buildings outside a setback area away from any identified fault lineament. Implicit in Snohomish County settling on this issue is its acceptance that with appropriate building codes and

precautionary testing that the plant can safely be built on the site.

ii. Spill Containment: The site will be designed to temporarily contain a spill of up to 4 million gallons from above-ground structures. The agreement allows this to be done with site features such as extra space in stormwater ponds or landscaping. As noted in Fact & Finding 1b above, this substantially satisfies the City of Woodinville's major concern for Little Bear Creek. It also requires an emergency spill response plan to be developed.

2. Proposed Agreement: The proposed Interlocal agreement is included as Attachment D. The key points are described below.

a. Prior Agreement: The terms of the prior agreement remain unless modified by this agreement.

b. Odor Control: The odor control standard of "no detectable odors at the property line on a 24-hours a day and 365 days a year" is reaffirmed in the agreement and tied to the agreed standards in the Snohomish County agreement (Section 3.1 in Exhibit A of Attachment C). The thresholds of key odor constituents of hydrogen sulfide (no more than 0.8 parts per billion (ppb) and ammonia (no more than 2800 ppb) are pulled from the FEIS and placed in the agreement. The odor reserve fund referenced in the 2004 agreement is established at $3 million, but noted that it does not express the financial limit of King County to correct problems that prevent the reaching of the odor control standard.

c. Conveyance Tunnel Issues:

i. Route: The design has matured to the point where a conveyance route has been selected. It uses SR 522 and 195th Street through Woodinville with a sweep turn beneath Rotary Community Park. The agreement provides for mitigation of vibration damage, although it is not presumed to be a factor due to the depth and slow speed of the tunneling work. This is an obvious area of concern when working in the area of the skatepark and its concrete structures. The agreement provides for impacts (damage or effects) to be mitigated.

ii. Easement: An easement is needed from the City of Woodinville for the approximately 750 feet that the easement is beneath the park.

d. Construction: The agreement affirms that it will construct to applicable codes of the underlying jurisdiction. Above ground construction in the vicinity of Woodinville will be in Snohomish County, but the agreement recognizes that it is possible that Woodinville could become the underlying jurisdiction. No above-ground construction is planned for Woodinville. No haul routes are currently planned for Woodinville, but the agreement provides for a plan if they start and they would require a right of way permit.

e. Mitigation: The agreement provides for two kinds of mitigation totaling $1.9 million. Transportation mitigation in the amount of $500,000 is included. Discussions presumed this would go toward the 195th/Wood-Sno project, as that is the most direct nexus to the project, but King County left this open for Woodinville to determine the clearest nexus. Community mitigation in the amount of $1.4 million is provided for trail improvements to the Little Bear Creek trail system. Discussions presumed this would either go toward the pedestrian bridge in the Downtown/Little Bear Creek Corridor Master Plan or toward the trail system. This is supportive of the concept that the County investment can go toward non-motorized corridor completion work.

f. Reclaimed Water: The agreement gives Woodinville a seat at the table for planning and discussions as to the availability of recycled water in Woodinville.

ANALYSIS: King County has carefully planned out its facility and has determined to carry out the plan on the Route 9 site. Staff has worked the issues of proximate impact, need for easement and future underlying jurisdiction and believes it has presented the best voluntary agreement possible considering the changes since the 2004 agreement.

ALTERNATIVES:

1. Approve Agreement: *This would have the effect of acceptance of the Brightwater project in the areas controlled by Woodinville for the benefits offered in the agreement.*
2. Disapprove Agreement: *This would have the effect of not accepting the project and foregoing the benefits for a principle(s) to be defined by Council.*
3. Seek Amendments: *This may or may not keep the parties in voluntary agreement.*

MOTION: I MOVE THAT THE CITY COUNCIL APPROVE THE PROPOSED BRIGHTWATER INTERLOCAL AGREEMENT AND AUTHORIZE THE CITY MANAGER TO SIGN IT AND FURTHER AUTHORIZE THE CITY MANAGER TO MAKE MINOR, NON-SUBSTANTIVE LANGUAGE CHANGES TO THE AGREEMENT IF NECESSARY PRIOR TO SIGNING.

Attachments:

- A: April 8, 2004 Brightwater Interlocal Agreement
- B: Proposed Easement
- C: Snohomish County/King County Settlement Agreement
  - Exhibit A: Development Agreement
  - Exhibit B: Detailed Mitigation Listing
- D: Proposed Interlocal Agreement (without easement attachment)

ATTACHMENT A

RECEIVING NO. 2025
DATE 4.14.04
CITY CLERK Sep
04-055

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

WHEREAS, in November 2003, King County issued its Final Environmental Impact Statement (FEIS) regarding the Brightwater Regional Wastewater Treatment System ("Brightwater Project"); 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, deep tunnel conveyance facilities, a marine outfall and five (5) primary portal sites; and

WHEREAS the City of Woodinville and King County agree that the FEIS does an adequate job of evaluating the probable significant adverse impacts of the Brightwater Project that may impact the City of Woodinville; and

WHEREAS, the City of Woodinville and King County desire to look ahead to the specific issues which will be raised during the pre-design and permit application process and to enter into an agreement on principles to guide the parties at that more detailed stage of the Brightwater Project; and

WHEREAS this Memorandum of Agreement sets forth areas of interest to the parties, identifies measures King County is willing to take to provide the City of Woodinville with additional information in each area and identifies the overall goals of King County and the City of Woodinville in each area.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. The City of Woodinville and King County agree that the FEIS does an adequate job of evaluating the probable significant adverse impacts of the Brightwater project that may impact the City of Woodinville.

2. <u>Guidelines for Addressing Potential Odor Impacts</u>

A. Odor Control Standards

Odor control is of paramount concern to King County and the City of Woodinville, the current city boundary of which lies immediately to the south of the selected site for the Brightwater Treatment Plant and immediately southeast of the selected site for Portal 41. To address this concern, King County has voluntarily committed itself to build and operate the Brightwater Treatment Plant to meet an odor control standard of "no detectable off-site odor". This standard will be met at the plant

Site property line and the Portal 41property line, 24 hours a day, 365 days a year, using multi-stage chemical odor control units and carbon polishing with all process units covered or enclosed.

King County reaffirms its commitment to building the Brightwater Treatment plant to meet the above stated standards, subject to King County appropriation. Within the next 60 days, the King County Executive shall transmit this MOA to the King County Council so that the condition of the plant construction and related odor standard being subject to appropriation can be removed as a condition at such time as the King County Council approves this condition in the MOA. All other elements of this document are affirmed with the signing of this document by both parties.

If the King County Council does not approve the removal of this condition, the parties will re-open discussions on this section and will make a good faith effort to reach an equitable solution.

B. Odor Reserve Fund

An Odor Reserve Fund (Fund) will be established by King County to provide, if needed, additional financial resources to meet the odor control standards noted above. The Fund would be used exclusively to further enhance the odor control system, should it not meet the standard of "no detectable odors at the property line". This fund will provide an added level of confidence to the City of Woodinville and its residents that King County's odor control standards will be met.

King County will establish the amount of the Odor Reserve Fund following a peer review of the odor control system and will base the amount upon estimated costs of projected actions that would be taken should the system not meet the standards.

King County will establish an Air Quality Board before the Brightwater system begins operation. The Board will be formed to monitor King County's performance meeting the odor control standards and to advise King County on if, and when, to utilize the Odor Reserve Fund. It will be composed of a limited number of members representing local governments and organizations, regulating agencies, citizens and odor experts

A peer review panel would be assembled in 2004 by King County to review the Brightwater odor control system design before finalization. The peer review will be composed of experts in odor control. The peer review panel will be tasked with recommending an amount for the Odor Reserve Fund and a reasonable period of time for holding the amount in reserve that is of sufficient length to prove the odor control effectiveness of the system and developing a charter for the Air Quality Board. King County will retain the odor reserve for at least that period of time.

The City of Woodinville will review the results of the peer review and provide input in the reserve fund amount. The City of Woodinville will also appoint a City representative to serve on the Air Quality Board.

3. Guidelines for Addressing Transportation Management Plan

King County commits to meeting with Woodinville to develop a Transportation Management Plan (TMP) for construction at the Brightwater Treatment Plant. As part of this effort, King County will work into the TMP the City of Woodinville's concerns on traffic management issues, with appropriate mitigation for any probable significant traffic impacts such as level of service degradation upon the City of Woodinville.

If there is any construction haul route that is required through or that is likely to significantly impact the City of Woodinville it will be reviewed with the City of Woodinville, and all required permits would be obtained from the City of Woodinville before construction begins. King County will negotiate with the City of Woodinville to identify mitigation measures for any significant impacts that are identified. King County will consult with the City of Woodinville regarding any revisions to the TMP that may affect the City and it's residents.

4. Route 9 Improvements

King County has been and will continue to work with WSDOT to coordinate the Brightwater Treatment Plant construction with the Route 9 widening project and to mitigate probable significant transportation impacts related to the concurrent construction of the Route 9 highway adjacent to the Brightwater site. If the widening project stays on schedule to be completed in 2006, King County will make every effort to begin construction after the road project is complete. Construction staging may be possible for WSDOT on the Brightwater site to ease construction impacts on the roadway itself, and King County is working to make that opportunity available to WSDOT. King County's understanding is that WSDOT is making every effort to begin this improvement project as quickly as possible. The City of Woodinville will express its support of the Route 9 widening project and the desire for that project to stay on schedule to State and local agencies as requested through letters or resolutions. If the City must formally approve any aspect of permitting of the Route 9 widening project, it will not unreasonably withhold any such approval.

5. Biosolids Truck Trips

All biosolids trucks that would come to, or leave, the Brightwater treatment plant would do so via State Route 522 and State Route 9. These covered trucks would number approximately 2-3 trucks per day, as stated in the FEIS. If SR 522 and SR 9 become unavailable for a period of time these biosolid haul routes may be modified to include arterials in the City of Woodinville. These routes will not be assigned for daily hauling without advance notice, negotiation and agreement by the City of Woodinville. King County will work with the City of Woodinville to define these routes and provide

appropriate mitigation for any significant impacts associated with these haul routes. King County will have a route plan in place with the City of Woodinville before the plant commences operations to address any emergency that would cause a haul route to be switched to the City of Woodinville for a limited period of time.

6. FEIS Clarifications

Upon review of the Brightwater FEIS, the City of Woodinville has identified some statements which in its view warrant clarifications. The FEIS noted in Volume 11 at p. 11-13 that the Route 9 site is not within the area proposed for annexation by the City of Woodinville. This is a correct statement regarding the area currently proposed for annexation by the City. As nearly all of the Route 9 area remains within the City's designated urban growth area, however, it could at some future date be proposed for annexation.

A second area of clarification related to the statement in the FEIS as to the ownership of wells in the City of Woodinville. The FEIS states in Volume 6 at p. 6-21 that the City of Woodinville has wells. The wells in question are located in the City of Woodinville, but are owned by the Woodinville Water District, and not the City. This clarification was not spelled out in the FEIS.

King County will issue written clarifications to these items.

7. Guidelines for Addressing Emergency Management Planning

King County recognizes the importance of emergency management planning and pledges to work with the City of Woodinville and the Woodinville Fire and Life Safety District (taking into account current inter-local agreements) regarding emergency management planning and related facility design issues to accommodate the construction and operation of the Brightwater Project. Input will be gained by working directly with each of the parties mentioned above during the design and permitting phases of the Brightwater project, which are now underway.

King County will work with all emergency first responders that would be required to provide service along the Brightwater System, including the City of Woodinville, to address adequate response times, availability of required equipment and training of response staff to assure each jurisdiction that the needs of the Brightwater project can be provided for during construction and operations and that citizens will continue to have timely response from local emergency service providers.

8. Guidelines for Addressing Potential Construction and Operational Impacts at the Treatment Plant Site

The City of Woodinville is in close proximity to the Brightwater treatment plant site and its citizens and businesses could be affected by the construction or operation of the Brightwater facilities if probable significant impacts were not appropriately mitigated.

King County will work with the City of Woodinville to address the probable significant construction and operational impacts associated with Brightwater activities at the treatment plant site that lies just north of the current City limits of Woodinville and within its proposed urban growth area. Woodinville is not currently the permitting jurisdiction with approval authority at this site, but could potentially be affected by construction or operational activities.

King County commits to consulting with and allowing the City of Woodinville to review and comment on all preliminary design drawings that will be part of the submittal package for the Conditional Use Permit application to Snohomish County regarding the treatment plant site. King County will identify probable significant impacts to the City of Woodinville and propose appropriate mitigation. The process will work as follows: three weeks prior to King County's submittal to Snohomish County, preliminary design drawings for the permit submittal will be shared with the City of Woodinville; after two weeks, input will be taken from the City of Woodinville; and King County will make adjustments to the drawings as it deems appropriate, based on the City's comments before a formal submittal is made to Snohomish County. King County will release all other Snohomish County permit applications to the City of Woodinville concurrently as they are submitted to Snohomish County.

The product of this consulting, review and comment process is advisory and is not binding on either King County or the issuing agency. Nothing in this section shall create any liability or responsibility by the City of Woodinville for any plan, design or permit review. Responsibility for the complete and accurate preparation of permits, plans and specifications and for compliance with applicable codes shall rest exclusively with King County.
The appropriate sections of the existing "Woodinville Design Guidelines" will be taken into account as design work on the Brightwater treatment plant continues, in an effort to respect the proximity between the treatment plant site and the City of Woodinville and the potential that the site may eventually be annexed to the City.

King County will also take into account the planning, design and construction work that the City of Woodinville has completed to date to enhance the Little Bear Creek corridor for the betterment of an important regional habitat and the recreational use of residents of the City of Woodinville. The design of Brightwater will attempt to build on this work and where possible, further enhance the habitat of Little Bear Creek and provide additional public recreation opportunities or develop continuity between recreational opportunities developed by the City and the Brightwater Project.

King County commits to involving a representative of the City of Woodinville in mitigation discussions related to the treatment plant site. King County commits to gaining input from and involving the City of Woodinville in the planning of all public mitigation meetings related to the Brightwater Treatment Plant.

9. Guidelines for Woodinville Staff Review Funding

King County commits to reimburse the City of Woodinville for staff time (including staff time for review and input by the Woodinville Fire and Life Safety District) that will be required to provide review of Brightwater design and permit submittals based on an agreed to scope of work and associated hourly rates. King County will also provide reimbursement for staff involvement required for public meetings also based on an agreed to scope of work and associated hourly rates. King County will not reimburse any legal fees incurred by the City of Woodinville related to the Brightwater Project or fund the participation of the City of Woodinville's representative on the Air Quality Board.

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 3 candidates it proposes to act as a non-binding mediator within ten (10) days following notification of a dispute. The candidates proposed shall be from Judicial Arbitration and Mediation Services (JAMS) or Judicial Dispute Resolution (JDR) or shall be a neutral, independent and recognized expert in the field in which the dispute arises. 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 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. 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, which the City and King County hereby reserves in full.

12. 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.

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

KING COUNTY

By: _____ Dated: 4/8/04

Title: Division Director

Approved as to form: _____
Prosecuting Attorney

ATTEST: _____

CITY OF WOODINVILLE

By: Donald Moore Dated: 4-06-04

Title: CITY MANAGER

Approved as to form: _____
City Attorney

ATTEST: Sandra Parker, CMC
City Clerk

Document Title:	Subsurface Utility Easement
Grantor(s):	City of Woodinville
Grantee:	King County
Abbreviated Legal Description:	EASEMENT UNDER PORTION OF SE 1/4 NW 1/4 SEC 3, TWN 26 N, R 5 E
Additional Legal Description is on Page:	Exhibit "A" for Tax Parcel No. 0326059299 Exhibit "B" for Tax Parcel No. 0326059026
Assessor's Tax Parcel Number(s):	0326059299 and 0326059026

R/W No. 41-19 and 41-20

SUBSURFACE UTILITY EASEMENT

WHEREAS, King County ("Grantee") is a political subdivision of the State of Washington and is authorized by Chapter 8.12 RCW, RCW 35.58.320, 35.58.200 and 36.56.010, K.C.C. 28.01.030 and 28.81.010 and Ordinance 10531 to acquire and condemn real property for public use for sewage treatment and water pollution abatement facilities; and

WHEREAS, Grantee plans to construct, operate and maintain a regional wastewater treatment facility, conveyance system and outfall, commonly referred to as the Brightwater facility to be located in King and south Snohomish Counties (the "Project"); and

WHEREAS, in order to operate the Project it is necessary for Grantee to acquire perpetual exclusive subsurface easements granting Grantee and its successors and assigns the right to install, construct, own, operate, maintain and repair underground pipelines, pump stations and related equipment, appurtenances, utilities and facilities to provide for the conveyance of sewage to the Project and the conveyance of treated wastewater to outfalls located in Puget Sound.

NOW, THEREFORE, in consideration of the mutual covenants and agreement hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Grant of Subsurface Utility Easement. **City of Woodinville**, a Washington municipal corporation ("Grantor"), for and in consideration of Ten Dollars ($10.00) and other valuable consideration in hand paid and under threat of condemnation, conveys and warrants to King County, a political subdivision of the State of Washington, its successors and assigns ("Grantee"), an exclusive permanent subsurface easement (the "Easement") under the surface of and through portions of the real property more particularly described in Exhibits "A" and "B" attached hereto and by this reference incorporated herein (the "Property").

This Easement is for the benefit of all property now owned or hereafter acquired by Grantee which constitutes a portion of the Project for all purposes necessary or incidental to the installation, construction, ownership, use, operation, maintenance, inspection, repair, replacement, renovation, improvement, removal and enhancement of one or more underground pipelines, together with any and all related vaults, meters, monitoring equipment, conduits, wires and other necessary and convenient equipment and appurtenances, including, but not limited to, all utility lines or equipment servicing said pipelines and related equipment and appurtenances or located within the Easement Area (collectively, the "Easement Improvements").

The purchase price for this Easement which is being granted and conveyed by Grantor to Grantee under threat of condemnation will be paid by Grantee from the King County Water Quality Fund.

Purpose of Easement. Grantee shall have the right to use the Easement Area for all purposes necessary or incidental to Grantee's installation, construction, ownership, use, operation, maintenance, inspection, repair, replacement, renovation, improvement, removal and enhancement of underground pipelines and related Easement Improvements, including, but not limited to, the right to install, construct, operate, maintain, modify, repair, replace, improve, remove and use said pipelines, pipeline supports and all utility lines or wires within said Easement Area for any related uses as Grantee may now or hereafter deem appropriate, including the addition, removal or replacement of same at Grantee's election, either in whole or in part with either like or different size pipe, and the installation of additional pipelines, utilities and other facilities and equipment now or hereafter associated with the Project within the Easement Area. All Easement Improvements of any kind that are now or hereafter acquired, constructed or installed within the Easement Area shall be and shall at all times remain the property of Grantee.

Other Utility Installations. Grantee shall have the right, for no additional consideration, to grant third parties non-exclusive easements to install electrical, fiber optic or other utilities within the Easement Area, so long as such utilities are part of and provide utility service to the Project and furthermore, so long as any such utility improvements are located solely within the boundaries of the Easement Area and remain subject to all terms, covenants, conditions and limitations set forth in this Easement (hereinafter such utilities shall be referred to as "Other Utilities."

Grantor's Use of Property. Grantor represents that it is the owner of the Property and has the authority to enter into and perform its obligations under this Easement. Grantor further represents that, to the best of Grantor's actual knowledge, there are no improvements known to Grantor located under the surface of the Property (other than footings and foundations for the existing improvements located on the Property as of the date hereof). Grantor reserves all other rights to use the Property, so long as such use does not interfere with the rights granted Grantee under this Easement and do not obstruct or endanger the usefulness of any Easement Improvements now or hereafter maintained by Grantee in the Easement Area. The upper limit of the Easement Area described in Exhibit "A" is approximately 57 feet below the present surface elevation of the Property, and the upper limit of the Easement Area described in Exhibit "B" is approximately 32 feet below the present surface elevation of the Property. Prior to any construction work or any other activity by Grantor that requires use of the subsurface of the Property within a distance of **twenty (20)** feet from the upper limit of the Easement Area, Grantor shall notify Grantee in writing and shall provide Grantee with a copy of all plans and specifications for such proposed construction activity for review at least thirty (30) days prior to the commencement of such construction. Grantor shall not commence such construction, work or activity unless and until it has received Grantee's prior written consent that the Grantor's proposed construction, work or activity will not interfere with the Grantee's rights under this Easement. Grantee's review and approval of Grantor's plans and specifications shall be strictly limited to the facilities and/or excavation shown on the plans and specifications submitted to Grantee and shall in no event constitute or be construed as a certification of the adequacy or sufficiency of Grantor's plans and specifications nor whether Grantor's construction, work or activity complies with other applicable laws, building codes and other governmental rules and regulations.

Grantee's Use of Easement Area. Grantee represents that the normal operation of the Easement Improvements for their intended purposes within the Easement Area will not be audible from the surface of the Property nor cause vibrations of the Property that will be felt by Grantor, its successors, assigns, tenants or subtenants on the surface of the Property. Grantee may implement, at its expense, a settlement-monitoring program during construction of the Easement Improvements (which may include a survey of the condition of the Property and improvements prior to construction of Easement Improvements).

Indemnity. Grantee shall protect, indemnify, defend and hold harmless Grantor, its officials and employees from and against any and all claims or causes of action arising out of or resulting from the installation, construction, repair or replacement of any of the Easement Improvements or Other Utilities, or from the operation, maintenance or use of the Easement Area by Grantee, its agents or any third parties to whom Grantee has granted permission to install Other Utilities. Grantee further agrees to promptly repair any damage to the Property, the improvements located on the Property or any damage resulting from subsistence or settling of the Property caused by Grantee in the installation, construction or use of the Easement Improvements; provided, however, that 's duties and obligations as provided herein Grantee shall not extend to any claim, cause of action, loss, damage or liability resulting from the negligence or willful act or omission of Grantor(s), its heirs, legal representatives, successors or assigns, or the concurrent negligence of Grantor(s), its heirs, legal representatives, successors or assigns to the extent of such concurrent negligence. It is further expressly understood that this indemnification includes claims by the Grantee's own employees for which the Grantee might otherwise be immune under Title 51 RCW, and the Grantee waives as respect to this indemnity only its immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

Grantor grants Grantee a right of entry onto the Property during normal business hours and following reasonable notice prior to, during, and up to one year after the commencement of construction of the Easement Improvements to enable Grantee to undertake a visual inspection of the Property and improvements and/or install minimally invasive monitoring equipment.

Notices. Any notices required or permitted under this Easement shall be personally delivered or sent by certified mail, return receipt requested and shall be deemed given three (3) days following the date when mailed or one (1) business day following personal delivery. All notices shall be sent to the following addresses:

To Grantee:	King County Wastewater Treatment Division Mailstop: KSC-NR-0503 201 South Jackson Street, Suite 503 Seattle, WA 98104-3855
To Grantor:	City of Woodinville Attn: Mick Monken, Director of Public Works 17301 133rd Avenue NE Woodinville, WA 98072
With a copy to:	Pete Rose, City Manager 17301 133rd Avenue NE Woodinvile, WA 98072

Either party may change the address to which notice is sent by notice to the other party.

Miscellaneous Provisions.

(a) **Binding Effect**. This Easement is appurtenant to and shall run with all real property and real property interests and easements now owned or hereafter acquired by Grantee as part of the Project, which Grantor acknowledges will include underground pipelines, pump stations to and from the Project

treatment facility and related facilities operated by Grantee for sewage treatment and water pollution abatement facility purposes and shall inure to the benefit of Grantee, its successors and assigns and shall be binding upon the Property and Grantor, and its heirs, legal, representatives, successors and assigns. Grantee shall have the right to assign its rights under this Easement, in whole or in part.

(b) **Construction**. All of the recitals set forth above are incorporated into this Easement as though fully set forth herein. The headings contained in this Easement are for convenience of reference purposes only and shall not in any way affect the meaning or interpretation hereof, nor serve as evidence of the intention of the parties hereto. Whenever the context hereof shall so require the singular shall include the plural.

(c) **Entire Agreement**. This Easement sets forth the entire agreement of the parties as to the subject matter hereof and supersedes all prior discussions and understandings between them. This Easement may not be amended, except by an instrument in writing signed by a duly authorized officer or representative of each party hereto.

(d) **Severability**. In case any one or more of the provisions contained in this Easement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Easement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(e) **Waivers**. No waiver of any right under this Easement shall be effective unless contained in a writing signed by a duly authorized officer or representative of the party sought to be charged with the waiver and no waiver of any right arising from any breach or failure to perform shall be deemed to be a waiver of any future right or any other right arising under this Easement.

(f) **Governing Law**. This Easement shall be governed by and construed and enforced in accordance with the laws of the State of Washington.

Dated this ___ day of _____, 2005.

City of Woodinville

By: _____

Its: _____

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this day personally appeared before me _____ to me known to be the _____ of City of Woodinville, the City that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the said City, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument.

Dated: _____

_____
Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

King County Brightwater TREATMENT SYSTEM

Snohomish County – King County Settlement Agreement For the Brightwater Wastewater Treatment Facilities

Outline of Key Points

A. Resolves all outstanding litigation between the parties.

Four Pending Cases:

- Growth Board claims and appeals re: Essential Public Facilities Ordinance
- Growth Board claims re: Odor and Seismic Ordinances
- Superior Court claims re: Odor and Seismic Ordinances
- Hearing Examiner Appeal of King County's Seismic SEIS

B. Creates Public Involvement and Regulatory Certainty in the Permitting Process

- **Permitting Commitments:**
  - Governed by a development agreement with a term of 35 years;
  - Development agreement not final until approved by Council Ordinance;
  - Instead of a simple building permit, requires a binding site plan permit;
  - Public hearing on the permit will be held;
  - PDS will make a recommendation on the BSP permit;
  - Independent Hearing Examiner makes final decision;
  - Public input is required before final decision; and
  - Expedited appeals to superior court.

- **Odor Control System and Long-term Operating Commitments:**
  - King County has agreed to "no detectable odor" at or beyond its borders.
  - Snohomish County established strict limits on air emissions of:
    - 8ppb of hydrogen sulfide
    - 2800 ppb of ammonia
  - King County must design its odor control system to the best available control technology (Preferred Alternative Design 165E).
  - Requires a $3 million odor reserve fund to fix unanticipated problems.
  - No limit on how much King County must expend to stay in compliance.
  - Must use best available odor monitoring equipment and devices.
  - Snohomish County must approve its odor monitoring plan.
  - Establishes an Air Quality Board which is appointed jointly by King and Snohomish Counties to oversee long-term odor control issues.

- **Seismic Protection Commitments:** **(cont. on next page)**

Brightwater
King County TREATMENT SYSTEM

Snohomish County – King County Settlement Agreement
For the Brightwater Wastewater Treatment Facilities

Outline of Key Points
(Continued)

- **Seismic Protection Commitments:**
  - King County has agreed to design the plant to meet strict seismic protection standards according to the newest (2003) International Building Code.
  - King County will perform more trenching and is prohibited from putting its chemical buildings on seismic fault.
  - King County must design the plant to contain emergency spills in the amount of 4 million gallons on the site.
  - King County must provide Snohomish County with its emergency response plan.

C. Provides Snohomish County's Citizens with Community Mitigation for projects totaling $70 million:

• Recreation and parks	$30,400,000
• Community Resource Center	$2,950,000
• Public Safety Improvements	$25,850,000
• Habitat Mitigation	$10,800,000
TOTAL:	$70,000,000

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement is entered into this ___ day of _____, 2005 by and between Plaintiff King County, a charter County and political subdivision of the State of Washington, and Defendant Snohomish County, a charter County and political subdivision of the State of Washington. Plaintiff and Defendant are collectively known as the "Parties."

RECITALS

1. King County, acting in its regional capacity as the successor to METRO, desires to construct a wastewater treatment plant and related conveyance, portal, and outfall system (hereinafter "Brightwater" or the "Brightwater project") in unincorporated south Snohomish County. The treatment plant will serve customers in northern King and southern Snohomish Counties and must be constructed by 2010 to serve anticipated growth in the area.

2. Snohomish County is the jurisdiction with land use and development permitting authority for the Route 9 treatment plant site, portions of the conveyance system and outfall pipe, and it will oversee the permitting and required mitigation for the Brightwater project for those facilities constructed within its jurisdiction.

3. There are currently four pending lawsuits between the parties:

3.1 Growth Management Hearings Board EPF Ordinance Claims. In 2003 and 2004, King County and the City of Renton appealed Snohomish County's adoption of Ordinance No. 03-006 and later, Emergency Ordinance No. 04-019, regulating the siting and permitting of essential public facilities or "EPFs" (which regulations are known as "EPF Ordinances I and II"). The cases are pending before the Central Puget Sound Growth Management Hearing Board ("CPSGMHB") *King County I and King County III* (Consolidated Cause No. 03-3-0011), and the consolidated cases are on remand to the Board following appeal and decision in Thurston County Superior Court (Consolidated Cause No. 04-2-00083-9).

3.2 Growth Management Hearings Board 2005 Seismic and Odor Ordinance Claims. In 2005, King County and the City of Renton (as an intervenor) appealed the adoption of Snohomish County's Emergency Ordinance No. 05-029 (establishing odor control standards for sewage treatment facilities) and Emergency Ordinance No. 05-030 (authorizing the imposition of seismic protections in addition to those standards set forth in state building codes adopted pursuant to chapter 19.27 RCW). This case is pending as King County IV (Cause No. 05-3-0031).

3.3 Superior Court Claims. King County and the City of Renton have filed a combined complaint and petitions ("Complaint") against Snohomish County in the Superior Court of Washington for King County, Cause No. 05-2-15430-6 SEA alleging several causes of action arising out of Snohomish County's adoption of Emergency Ordinance No. 05-029 (Odor Ordinance), and Emergency Ordinance No. 05-030 (Seismic Ordinance). The case is currently pending in Skagit County Superior Court under Cause No. 05-2-01384-5.

3.4 Snohomish County Appeal of the Brightwater Final SEIS. On August 5, 2005, Snohomish County filed an appeal under the State Environmental Policy Act (SEPA)

challenging the adequacy of the Brightwater Final Supplemental Environmental Impact Statement before the King County Hearing Examiner relating to seismic risks on the proposed site in south Snohomish County of King County's Brightwater sewage treatment plant.

4. Purpose and Intent of this Settlement Agreement. The Parties desire to enter into this Settlement Agreement in order to provide for regulatory certainty to both Snohomish County and its citizens, as well as King County for the timely construction of its Brightwater Wastewater Treatment System facilities within the unincorporated area of south Snohomish County. This agreement shall further settle all outstanding litigation between the parties, including future appeals of the decisions set forth in Section 3.1, 3.2, 3.3 and 3.4, above. Finally, this agreement establishes the total amount of community mitigation funds that shall be provided to Snohomish County for the construction of projects to mitigate the community impacts of King County's wastewater treatment facilities. The Parties intend that this Settlement Agreement is in full settlement and release and discharge of all claims which are now, or in the future might have been, the subject matter of the Complaints, Petitions and appeals of the Parties upon the terms and conditions set forth below.

5. Permit Process and Review Criteria—Development Agreement—Public Hearing Required. Pursuant to RCW 36.70B.170, the parties intend to enter into a development agreement governing the processing of permits for the construction of the Brightwater wastewater treatment plant and related facilities ("Brightwater facilities") that have not otherwise already been issued development permits or approvals ("Development Agreement"). The agreement shall provide for the review and permitting of Brightwater facilities using a voluntary binding site plan permit approval and a Type 2 process under Snohomish County's Unified Development Code (which process provides for a public hearing on certain permits before a hearing examiner prior to permit approval). This process shall be referred to in the Settlement Agreement and the Development Agreement as the "BSP Process." The parties agree to retain an independent hearing examiner to preside over the public hearings for the permit approvals. Appeals of the hearing examiner's final decision(s) shall be sent directly to Superior Court pursuant to the Land Use Petition Act (Ch. 36.70C RCW), in order to expedite legal review. In order to execute the Development Agreement, Snohomish County must approve it through the adoption of an ordinance and make the specific findings required by Chapter 30.75 SCC. The proposed Development Agreement is set forth in **Exhibit A,** which is attached hereto and incorporated herein by this reference. The adoption of an ordinance by Snohomish County approving the terms and conditions of the Development Agreement set forth in Exhibit A is a material condition of this settlement agreement. The failure of King County to execute the Development Agreement or the failure of Snohomish County to adopt an ordinance approving the Development Agreement shall render this settlement agreement null and void.

6. Mitigation of Community Impacts.

6.1 Amount of Community Impact Mitigation. King County Ordinance 13680 requires that a minimum of 10 percent of the total cost of the project shall be spent on mitigating the impacts of the construction and ongoing operation of its Brightwater wastewater treatment facilities on the surrounding communities, which include certain unincorporated areas of south Snohomish County, consistent with Chapter 35.58 RCW; Section 230.10.10 of the King County Charter, agreements for sewage disposal entered into between King County and component agencies and

other applicable county ordinance and state law restrictions. In addition to meeting the requirements of Snohomish County regulations and the special conditions required by the development agreement set forth in Exhibit A, King County agrees to pay Snohomish County the following sums to implement mitigation measures as described in **Exhibit B** (which is attached hereto and incorporated herein by this reference), in order to mitigate the identified short-term and long-term impacts of the Brightwater wastewater treatment facilities in Snohomish County:

• Recreational Facilities and Improvements:	$ 30,400,000
• Community Resource Center	$ 2,950,000*
• Public Safety Improvements:	$ 25,850,000
• Habitat Mitigation:	$ 10,800,000
Total Community Mitigation Funding:	$========= 70,000,000

The parties agree that the amount of funding specified in this Section represents mitigation funding for impacts to the affected neighborhoods and communities in and around the Brightwater facilities of the sewage treatment plant. The amounts specified within each category shown above may be allocated amongst the projects set forth in Exhibit B for the same category, in the sole discretion of Snohomish County. (For example, if one recreational mitigation project can be accomplished for less than the amount set forth in Exhibit B, then the remaining funds from that project may be reallocated to another recreational mitigation project in Exhibit B). Snohomish County may reallocate funds between the categories of "Habitat Mitigation" and "Recreational Facilities and Improvements" in an amount equal to no more than 10 percent of the combined total amount of funding for those categories. No additional projects may be added to Exhibit B without the express written consent of King County.

6.2 *Community Resource Center. The parties agree that the sum of $2.95 million, represented as Community Resource Center funding in Exhibit B, shall be spent by King County for the benefit of Snohomish County for the use of a community center on the Brightwater plant site located at Highway 9 in unincorporated south Snohomish County. King County agrees to provide the use of the Community Resource Center that shall be constructed on the Brightwater treatment plant site for use by government agencies and bona fide nonprofit organizations located within Snohomish County at no charge, in perpetuity, when the Center is to be used by such government agency or nonprofit organization to provide services that will benefit the public, in accordance with King County Code Section 4.56.150(E)(1)(d).

In order to ensure that the terms of Section 6.1 and 6.2 of this agreement are met, each party shall submit to the other, an annual report detailing how the requirements of these sections are met.

(a) Snohomish County shall submit an annual report to King County setting forth, in detail, the expenditure of the community mitigation funds. The annual report shall set forth the project description, the amounts expended on the project, the project status and the percent completion of each project until the project is 100 percent completed. Any unexpended funds in each category shall be returned to King County if not spent by December 31, 2015. If the cost of

any project exceeds the cost estimate set forth in Exhibit B, then the additional cost shall be the sole responsibility of Snohomish County.

(b) On or before January 31st of each year, King County shall submit an annual report stating the names of all Snohomish County bona fide nonprofit and governmental organizations that utilized its Community Resource Center during the preceding calendar year, as well as the frequency of the use, and any organizations that were denied free use of the center as not meeting the criteria of this Agreement.

(c) Both parties shall maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by it in the performance of the projects described in this Section 6.0. These records shall be subject to inspection, review or audit by personnel of King and Snohomish Counties, other personnel duly authorized by King and Snohomish Counties, the Office of the State Auditor, and federal officials to the extent authorized by law.

6.3 Mitigation Cap. Community mitigation funding for the Brightwater Project shall be capped at a maximum of $70 million. King County agrees to mitigation in the amount of $70 million (i.e. Community Mitigation Fund) as set forth above. King County and Snohomish County agree that additional mitigation imposed during the permitting process up to a maximum of $2.95 million (Additional Conditions) may be recommended by the Director of Snohomish County's Department of Planning and Development Services ("PDS Director" or "Director"), and/or imposed by the Hearing Examiner if reasonably necessary to mitigate impacts that are the direct result of the proposed development, after giving consideration to its status as an EPF (RCW 36.70A.200(5)). In the event that the Director recommends and/or the Hearing Examiner imposes Additional Conditions after the BSP public hearing required under the Development Agreement in Exhibit A, the cost of which will exceed $2.95 million dollars, the Community Mitigation Fund amount shown in Exhibit B shall be reduced by the cost of the Additional Conditions *in excess of* $2.95 million. In that event, Snohomish County shall identify which categories of projects for which funding shall be reduced.

6.4 Conditions Precedent To Mitigation Payments. King County's obligation to provide the Community Mitigation and the use of the Community Resource Center described above is conditioned upon King County obtaining all permits and approvals necessary to construct the Brightwater project as specified in the Development Agreement and all applicable appeal periods having passed on said permits and approvals. Notwithstanding the above, the Parties agree that King County shall disburse to Snohomish County $33.5 million of the Community Mitigation funds within 60 days of the latter of the approval of the BSP permit or the conclusion of any appeals associated with the BSP permit (including the conclusion of any appeals filed by either party or third parties of the conditions imposed by the hearing examiner). King County shall disburse the remaining Community Mitigation funds in two additional payments. The payment of $17.5 million shall be paid within 60 days of the approval by Snohomish County of all of the Treatment Plant Building Permits set forth in Exhibit A; the remaining payment of $16.05 million shall be paid 12 months thereafter. King County, at its sole election, may pay Snohomish County all or part of the mitigation payments due under this agreement at an earlier time than set forth herein.

6.5 Compliance With Applicable Laws. The parties intend that the payment of mitigation funds to Snohomish County shall be in compliance with all applicable laws and regulations. In the event that a court of competent jurisdiction finds that any expenditure or payment of funds by King County for the benefit of impacted communities required under this Agreement shall be illegal or in violation of any law or regulation, Snohomish County shall promptly return any unexpended funds to King County where required by such court order. To the extent that such funds have already been spent on projects under this Agreement, then the parties agree to immediately enter into discussions to promptly determine the manner and amount to which funds must be credited back to King County in light of the court's order. In the event that any of the Community Mitigation funds are held by a court to be illegally imposed, Snohomish County will nonetheless take no action to withdraw or otherwise invalidate any permits or approvals it has issued and the Parties agree to discuss any new concerns related to mitigation issues.

7. King County's Obligations. King County's obligations to make payment of the mitigation funds described in this Settlement Agreement (i.e. Community Mitigation or Additional Conditions, if any) shall accrue as set forth in Paragraph 6.4 above. However, King County's obligation to make payment of mitigation funds or to fulfill any other obligation under this Settlement Agreement is contingent on it actually proceeding with the Brightwater project. King County has the sole discretion to determine whether or not it will proceed with the Brightwater Project and it may, at its sole election, terminate construction of the Project and, thereby, its obligations under this Settlement Agreement by providing Snohomish County with written notice of its intent to terminate. If King County terminates construction of the Brightwater Project, then any unexpended mitigation funds will be reimbursed to King County.

8. Mutual Release. Based upon the mutual benefits and consideration conferred by this Settlement Agreement, the Parties hereby mutually release and forever discharge the other Party, its officers, elected and appointed officials, employees and agents, from any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, including challenges before the Central Puget Sound Growth Management Hearings Board, which each Party may now have, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of, or which are the specific subject of the litigation described in Paragraph 3. This release shall be a fully binding and complete settlement between the Parties, and their heirs, assigns and successors.

9. Dismissals of Pending Litigation. Concurrently with the final execution of this Settlement Agreement, counsel for both Parties shall present to the Court, Growth Management Hearings Board, and King County Hearing Examiner stipulations for dismissal with prejudice of all Growth Board appeals, all Superior Court cases (including cases in Thurston and Skagit counties), and the King County Hearing Examiner SEPA appeal litigation set forth in Paragraph 3. Nothing in the foregoing shall limit King County's right to challenge the reasonableness of mitigation required by Snohomish County on any Brightwater project permit or approval under this Settlement Agreement and Development Agreement during the permitting process or limit the rights of either Party to sue for enforcement of this Settlement Agreement, except that King County may not challenge the imposition of standards on the construction and operation of the Brightwater facilities as set forth in the Special Conditions of the Development Agreement attached hereto as Exhibit A.

10. Hold Harmless and Indemnification. Snohomish County and King County agree, to the extent permitted by law, to defend, protect, save and hold harmless the other party, its officers, elected and appointed officials, employees and agents from any and all claims, costs, damages, and expenses suffered due to each party's own actions or those of its officers, elected and appointed officials, employees and agents in the performance of this Agreement. The obligations under this paragraph shall extend to any claim, demand and/or cause of action brought by or on behalf of any officer, appointed or elected official, employee or agent of either party. The foregoing duty is specifically and expressly intended to constitute a waiver of each parties' immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity and defense of claims, demands, causes of action, costs, damages and expenses, included above, that are made by the indemnifier's employees, agents, officials, officers and subcontractors. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

11. Binding Effect; Assignment. This Settlement Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, legatees, representatives, receivers, trustees, successors, transferees and assigns.

12. Representations or Warranties. Each signatory to this Settlement Agreement represents and warrants that he or she has full power and authority to execute and deliver this Settlement Agreement on behalf of the entity or party for which he or she is signing, and that he or she will defend and hold harmless the other party and signatory from any claim that he or she was not fully authorized to execute this Settlement Agreement on behalf of the person or entity for whom he or she signed. Upon proper execution and delivery, this Settlement Agreement will have been duly entered into by the parties, will constitute as against each party a valid, legal and binding obligation, and will be enforceable against each party in accordance with the terms herein.

13. Governing Law and Venue. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or relating to this Settlement Agreement shall lie in Thurston County Superior Court.

14. No Admission of Liability. This Settlement Agreement represents a compromise of all claims and does not constitute and shall not be construed as an admission of liability or responsibility on the part of any of the Parties or agreement to the complaints, petitions or responses of either party now set forth in the pleadings filed in the litigation pending between the parties.

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.

16. Notice of Default and Enforcement. In the event any Party, acting in good faith, believes that the other Party has violated the terms of this Settlement Agreement, the aggrieved Party shall give the believed offending Party notice of the alleged violation by sending a detailed

written statement of the same to the representative for the offending Party by first class mail or facsimile. This notice is intended to invite a resolution by the Parties of any dispute prior to the institution of litigation. This Settlement Agreement may be filed with a court to enforce its terms only upon the expiration of thirty (30) days after said notice is posted, at which time the aggrieved Party may file and serve an action for appropriate relief. For purposes of this paragraph, the identities and addresses of the Parties' representative are as set out in the following paragraph. The identity or address of the representative for any party may be changed for purposes of this paragraph by written notice to the representative for the other Party.

17. Notices. All notices, requests, demands, and other communications called for or contemplated by this Settlement Agreement shall be in writing, and shall be deemed to have been duly given by mailing the same by first-class mail, postage prepaid; by delivering the same by hand; or by sending the same by telex or telecopy, to the following addresses, or to such other addresses as the Parties may designate by written notice in the manner aforesaid, provided that communications that are mailed shall not be deemed to have been given until three business days after mailing:

KING COUNTY:
Christie True
Manager, Major CIP Section
201 South Jackson Street
Seattle, WA 98104
MS/ KSC-NR-0503

SNOHOMISH COUNTY:
Chair, Snohomish County Council
3000 Rockefeller Avenue
Everett, Washington 98208

18. Attorneys' Fees and Costs. Each party shall bear its own attorneys fees and costs in connection with this settlement agreement and with the litigation set forth in paragraph 3 herein.

19. Severability. This Settlement Agreement does not violate any federal or state statute, rule, regulation or common law known; but any provision which is found to be invalid or in violation of any statute, rule, regulation or common law shall be considered null and void, with the remaining provisions remaining viable and in effect.

20. Cooperation in Execution of Documents. The Parties agree properly and promptly to execute and deliver any and all additional documents, including the easement and quitclaim deed that may be necessary to render this Settlement Agreement 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.

21. Counterparts; Facsimile. 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 agreement. Signatures transmitted by facsimile are sufficient.

22. Equal Opportunity to Participate in Drafting. The Parties have participated and had an equal opportunity to participate in the drafting of this Settlement Agreement. No ambiguity shall be construed against any party based upon a claim that that party drafted the ambiguous language.

23. Final and Complete Agreement. This Settlement Agreement constitutes the final and complete expression of the parties on all subjects. This Settlement Agreement may not be modified, interpreted, amended, waived or revoked orally, but only by a writing signed by all parties. This Settlement Agreement supersedes and replaces all prior agreements, discussions and representations on all subjects including without limitation. No party is entering into this Settlement Agreement in reliance on any oral or written promises, inducements, representations, understandings, interpretations or agreements other than those contained in this Settlement Agreement and the exhibits hereto.

24. Full Understanding. The Parties each acknowledge, represent and agree that they have read this Settlement Agreement; that they fully understand the terms thereof; that they have had the opportunity to be fully advised by their legal counsel, accountants and other advisors with respect thereto; and that they are executing this agreement after sufficient review and understanding of its contents.

25. Effectiveness. This Settlement Agreement is contingent upon and shall become effective immediately following its execution by both parties, the adoption of an ordinance by Snohomish County approving the development agreement attached as Exhibit A, and the execution of Exhibit A by both parties.

THE UNDERSIGNED HAVE READ THE FOREGOING SETTLEMENT AGREEMENT, KNOW THE CONTENTS THEREOF, ACKNOWLEDGE THAT ITS TERMS ARE CONTRACTUAL AND NOT MERE RECITALS, ACKNOWLEDGE THAT EACH HAS SIGNED OF HIS OR HER OWN FREE ACT IN THEIR INDIVIDUAL AND REPRENTATIVE CAPACITIES, AND ACKNOWLEDGE THAT THEY FULLY UNDERSTAND THIS AGREEMENT.

IN WITNESS WHEREOF the parties have Executed this Development Agreement this _____ day of _____, 2005.

SNOHOMISH COUNTY	KING COUNTY
_____	_____
By: Aaron G. Reardon County Executive	By: Ron Sims County Executive
Approved as to form:	Approved as to form:
_____	_____
Millie Judge, Assistant Chief Civil Deputy Prosecuting Attorney	Verna Bromley Senior Deputy Prosecuting Attorney

DEVELOPMENT AGREEMENT
BETWEEN KING COUNTY AND SNOHOMISH COUNTY
FOR THE
BRIGHTWATER WASTEWATER TREATMENT FACILITIES

This Development Agreement is entered into by and between King County, a charter county and political subdivision of the State of Washington, and Snohomish County, a charter county and political subdivision of the State of Washington pursuant to the authority set forth in Sections 36.70B.170 through 36.70B.210 RCW and Chapter 30.75 of the Snohomish County Code (SCC). Plaintiff and Defendant are collectively known as the "Parties." This Agreement shall become effective upon execution by King County and adoption of an ordinance by Snohomish County approving it as required by Ch. 36.70B RCW.

The purpose of this Agreement is to establish the permitting standards and conditions, certain mitigation measures, and permit process governing the review and construction of King County's Wastewater Treatment plant and related facilities within the unincorporated areas of south Snohomish County (hereinafter referred to as the "Brightwater" plant and/or facilities), as well providing certain additional requirements for the operation of Brightwater in the future.

This Development Agreement is an exhibit to and a part of the Settlement Agreement executed between Snohomish County and King County on the subject of Brightwater.

1.0 PERMIT TYPE AND PROCESS

1.1 Binding Site Plan Required

(a). BSP required. The parties agree that King County shall submit an application for its Brightwater wastewater treatment plant located at the Highway 9 site through a binding site plan ("BSP") process that will include a recommendation by the Director of Planning and Development Services ("Director"), followed by a public hearing on the permit and a decision by a Hearing Examiner as described in Section 5 of the Settlement Agreement between the parties ("Hearing Examiner"). The BSP process shall follow certain provisions of Chapter 30.41D SCC to the extent that such provisions are consistent with this Agreement. The applicable standards are set forth in the General Conditions at Section 2.0, below.

(b). Phased Development. The purpose of the voluntary BSP process will be to ensure through covenants, conditions, restrictions, easements and other requirements binding upon King County, its successors, or assignees, that the collective lots continue to function as one site concerning but not limited to public roads, improvements, open spaces, drainage and other elements as specified in the Snohomish County Code for both an initial phase to treat 36 million gallons per day (mgd) of wastewater and a second phase to treat 54 mgd. The application of this BSP process will recognize that the Brightwater facility is an essential public facility (EPF) under the Growth Management Act (RCW Ch 36.70A) and that any mitigation imposed must comply with the standards set forth in the GMA for EPFs.

(c). Voluntary Participation in the BSP Process. Snohomish County acknowledges that King County's agreement to submit its project to a BSP process is voluntary, and is not otherwise required by the existing provisions of the Snohomish County Code, and has been agreed to by Snohomish County in lieu of pursuing additional new regulations under an essential public facilities ordinance for the Brightwater project. The parties acknowledge that King County's voluntary agreement to submit its project to the BSP process outlined in this Agreement is a material provision of this agreement made to effectuate settlement and without waiver of King County's Brightwater project status as an EPF. King County's voluntary participation in this BSP process will not act as an affirmative defense, as a bar under the doctrines of collateral estoppel or res judicata, or for any other purpose in any appeal brought by King County challenging the reasonableness of additional mitigation that Snohomish County may seek to impose as part of the BSP permitting process.

1.2 Expedited Type 2 Process

(a). Public Hearing Required. The BSP shall be processed using the Type 2 permit process set forth in Chapter 30.72 SCC, requiring an open record public hearing, except that the Hearing Examiner's decision shall be the final decision of the County in order to expedite the permitting process. In the event of a conflict between the procedures and criteria set forth in Chapter 30.72 SCC and this Agreement, the provisions of this Agreement shall govern. Following receipt of a complete BSP application from King County, Snohomish County commits to prioritizing review of the BSP application and to render the Planning and Development Services ("PDS") Director's recommendation within 45 days of receipt of the complete application.

(b). Special Hearing Examiner. The parties agree to jointly select a special Hearing Examiner who shall conduct the open record public hearing and issue a decision on the BSP permit for the Brightwater facilities. The cost of hiring a special Hearing Examiner shall be the responsibility of Snohomish County. The Hearing Examiner shall conduct himself or herself according to the requirements of SCC 2.02.060 (freedom from improper influence), SCC 2.02.070 (conflict of interest), and SCC 2.02.100 (powers).

1.3 Director's Recommendation

(a). Binding Site Plan—Director's Recommendation. The PDS Director's recommendation shall be governed by the terms and conditions of this section:

(i). Environmental Documents. For purpose of recommending mitigation, the Director shall make a recommendation on the BSP permit application utilizing the Final Environmental Impact Statement (FEIS) issued by King County in November of 2003, and the Supplemental Environmental Impact Statement (SEIS) issued in July, 2005 pursuant to Ch. 43.21C RCW (SEPA) for the project, which are hereby deemed adequate for purposes of permitting under Ch. 30.61 SCC.

(ii). EPF status to be considered. In making a recommendation on the BSP application, the Director shall consider the fact that King County's Brightwater Wastewater

Treatment System is an essential public facility as defined by state law in making his recommendation and follow the requirements of RCW 36.70A.200(5).

(iii). Standards and Conditions. The Director's recommendation shall be limited to whether King County's BSP application meets the requirements of this Development Agreement. If the Director determines that it does not, the Director may not recommend denial of the permit given the fact that the proposal is for an EPF, but the Director may recommend to the Hearing Examiner that additional mitigation be imposed consistent with the terms and conditions set forth herein.

1.4 Public Hearing Procedures

(a). Requirement for a Public Hearing. Prior to approving the BSP and within 35 days of receiving the Director's recommendation, the Hearing Examiner shall hold an open record public hearing on the application for the purpose of receiving information from the public, affected agencies, Tribes, or County staff on the proposed BSP application. Notice of the open record public hearing shall be as specified in SCC 30.72.030. PDS shall coordinate and assemble any available comments of other county departments and governmental agencies having an interest in the BSP. At the open record hearing, the Department staff shall present a summary of the comments of the Department and governmental agencies and the PDS recommendation for the imposition of conditions on the BSP application. The Hearing Examiner shall receive written comment or oral testimony from any person or entity desiring to comment on the project and the proposed conditions for approval for each permit application.

(b). Conduct of the Hearing. The Hearing Examiner may impose a uniform time limit on oral testimony in order to afford all citizens that have appeared in person an opportunity to testify. The Hearing Examiner may, in his or her sole discretion on a one-time basis, continue the public hearing to a date and time certain no more than 10-days from the last date of hearing if, in his or her sole discretion, it becomes necessary to do so in order to provide adequate time for all citizens present to testify. The Hearing Examiner will provide King County with an ample opportunity testimony at the outset of the public hearing to state its response to the Department staff report(s), and, following all public testimony to respond to questions, comments or inquiries presented at or prior to the public hearing. The Hearing Examiner will also provide King County with an ample opportunity to present such responses even if a time limit on testimony has been imposed. The Hearing Examiner shall issue a decision within 14 days of the conclusion of the public hearing.

1.5 Hearing Examiner's Criteria and Decision

(a). Scope of Decision. Recognizing that Brightwater is a regional EPF (RCW 36.70A.200(5)), the Hearing Examiner's authority shall be limited to approving the BSP permit as proposed, or approving it with modifications or conditions. The Hearing Examiner shall accept the SEPA documents prepared by King County (as described in Section 1.3(a)(i), above), as adequate for purposes of imposing mitigation of significant adverse environmental impacts as part of the BSP permit approval. The Hearing Examiner's decision shall not include challenges to the SEPA documents prepared by King County because those documents have been subject to appeal before the King County Hearing Examiner and in Superior Court.

(b). Review of Conditions and Mitigation of Impacts. In rendering a decision on the BSP permit, the Hearing Examiner shall limit his or her review to whether the conditions of this Development Agreement relating to the BSP permit have been met for the Brightwater project as set forth in Section 2.0 (General Conditions), and Section 3.0 (Special Conditions). In reaching a decision on the BSP, the Hearing Examiner shall accord the recommendation of the PDS Director substantial weight. Approval of the BSP shall also serve as approval of an official site plan as set forth in SCC 30.31B.210. The Hearing Examiner's decision on the BSP shall be the final decision of the County for purposes of appeal under Chapter 36.70C RCW.

2.0 GENERAL CONDITIONS

2.1 Applicable Binding Site Plan Provisions

(a). For purposes of this Development Agreement the following provisions of Chapter 30.41D SCC shall apply to this permit:

Snohomish County Code Sections:

- 30.41D.100(2),(3),(4),(5),(6),(8),(9),(10),(11) and (12) Decision criteria
- 30.41D.105 Subsequent development permits
- 30.41D.110 Decision criteria – conditions of approval
- 30.41D.200 Design standards – access requirements
- 30.41D.210 Road and right-of-way establishment & right-of-way dedication
- 30.41D.220 Phased development
- 30.41D.320(1),(2), and (3)(c) Revisions
- 30.41D.330 Taxes
- 30.41D.340 Recording with auditor
- 30.41D.350 Vacation

In lieu of SCC Chapter 30.41D.320 (3)(a) and (b), the definitions of "minor" revision and "major" revision shall be as set forth in **Exhibit 2,** which is attached hereto and incorporated herein by this reference.

(b). Certain Provisions Not Applicable. For purposes of this Development Agreement, the following provisions of SCC Chapter 30.41D shall not apply to this permit:

Snohomish County Code Sections:

- 30.41D.010 Purpose and applicability
- 30.41D.020 Procedure
- 30.41D.030 Application process for county owned property
- 30.41D.040 Additional submittal requirements
- 30.41D.100(1) and (7) Decision criteria
- 30.41D.120 Conditions for previously approved site plan
- 30.41D.130 Conditions when concurrently reviewed
- 30.41D.300 Acceptance of site improvements

- 30.41D.310 Bond or performance security
- 30.41D.320(3)(a), (b) Revisions

In addition, SCC 30.70.030 (general provisions - submittal requirements) shall not apply. Submittal requirements are governed by section 2.2, below.

2.2 Submittals – Determination of Completeness

The submittal criteria set forth in **Exhibit 1**, which is attached hereto and incorporated herein by this reference shall govern the determination of completeness for the BSP permit application. Upon satisfactory submission of the items set forth in Exhibit 1, PDS will issue a determination of completeness for purposes of vesting, except as otherwise provided in the Special Conditions of this Agreement.

2.3 Standard for Imposition of Additional Conditions

Any Additional Conditions imposed by the Hearing Examiner must be reasonably necessary as a direct result of the proposed development. The Hearing Examiner shall consider all of the information in the record, including the staff report(s), project file(s), and testimony received at or prior to the public hearing in issuing a decision on the BSP application and related permits, and shall ensure that any Additional Conditions do not render the construction of the Brightwater Wastewater Treatment System impossible or infeasible within the meaning of RCW 36.70A.200(5). The Hearing Examiner shall not impose conditions to mitigate odor and/or seismic impacts other than the requirements specified in the Special Conditions set forth in Section 3.0.

3.0 SPECIAL CONDITIONS

The parties have specifically negotiated the following special conditions that shall govern the construction and operation of the Brightwater Wastewater Treatment Plant. As such, compliance with the conditions in this section is a material condition of this Development Agreement.

3.1 Odor Standards and Long-Term Odor Control

(a). Odor Control System Required. The Brightwater Wastewater Treatment Plant shall be designed to operate and meet the standard of "no detectable odors" at the property boundaries of the Highway 9 plant site and beyond, which requires the use of best available control technologies in an odor control system. This standard shall apply to the design, construction, and long-term operation and maintenance of this facility. The phrase "no detectable odors" shall mean that no more than 0.8 parts per billion (ppb) of hydrogen sulfide and no more than 2800 ppb of ammonia may be detected at the property boundaries of the Brightwater facilities or beyond resulting from emissions from the treatment plant.

(b). Vesting and Compliance with Adopted Standards. For purposes of this Development Agreement, Snohomish County and King County agree that compliance with the terms and conditions set forth herein fully satisfy Snohomish County Emergency Ordinance

No. 05-029 ("Odor Ordinance") to the extent that it is still in existence at the time of the execution of the Settlement Agreement and applicable to the Brightwater facilities. Notwithstanding the provisions of Section 2.2, above, which govern the timing of vesting to the standards and requirements of the Snohomish County Code under this Agreement, the parties agree that King County is vested to Emergency Ordinance No. 05-029 at the time of execution of this Development Agreement.

(c). Design and Operational Requirements – No Detectable Odor. The Brightwater Treatment Plant and related facilities within the unincorporated areas of Snohomish County shall provide odor control systems using best available control technologies that are acceptable to the Puget Sound Clean Air Agency (PSCAA). The design shall be that known as King County's "Preferred Alternative 165E" as described in **Exhibit 3,** which is attached hereto and incorporated herein by this reference. (See, King County Odor Control Value Engineering Summary, September 2005). The construction of the odor control system described as Preferred Alternative 165E shall ensure that no detectable odors are present at the property line boundary or beyond. The odor prevention systems shall be designed to remove odorous compounds at peak load on a 24-hour, 365 days per year basis.

(d). Design and Operational Review Criteria. In order to meet the design criteria and odor standards set forth in paragraph (c), above, the King County Brightwater design (Preferred Alternative 165E) shall meet the following minimum requirements:

i. All wastewater treatment processes, except as set forth in paragraph (e) below, shall be covered or enclosed to capture and treat process air;

ii. Liquid-phase odor treatment shall be provided in the collection system to reduce the formation of odors, and to further reduce downstream treatment plant odor loading;

iii. Odor prevention systems shall be sized and designed to handle a "worst-case" operating condition, i.e. when combinations of meteorological conditions (such as inversions and stagnant air) coincide with peak odor releases from treatment processes, and assuming an air dispersion ratio of 1:25;

iv. Redundant odor control scrubbing equipment shall be included in the design of the Brightwater treatment plant;

v. The redundant air scrubbing equipment shall be used during maintenance or repair activities to meet the objective of no detectable odors at the property line boundary;

vi. Trucks or trains transporting biosolids shall be covered and secured in accordance with Chapter 296-17 WAC.

(e). Disinfection Facility. The disinfection facility for the reuse water that will be used on site will not be covered as it is not a source of odor and is meant to provide a public viewing

and education area where the public can observe the high quality of finished water treated at the plant.

(f). Monitoring and Response Plan Required. An odor control monitoring and response plan will be submitted by King County during the BSP permitting process. This plan will contain an "early warning" approach to odor monitoring and will be used to enforce the standards in this Agreement through routine stack and property line monitoring.

(g). Monitoring Devices. King County agrees to use the best available monitoring devices that are proven and reliable for ambient hydrogen sulfide and ammonia monitoring, to the maximum extent practicable, when monitoring at the odor control exhaust stacks and the treatment plant property line and beyond for compliance with the odor standards in this agreement.

(h) Creation of a Brightwater Air Quality Board. The parties shall create a Brightwater Air Quality Board, consisting of individuals representing:

- Wastewater, odor, science and engineering expertise;
- The Metropolitan Water Pollution Abatement Advisory Committee (MWPAAC);
- Local communities in close proximity to the plant; including the City of Woodinville and neighborhoods in south Snohomish County;
- King and Snohomish counties;
- Air Quality Regulators (PSCAA); and
- Affected Fire Department(s) or Fire Districts

Members shall be chosen jointly by the Executives of Snohomish County and King County. Board members shall have the appropriate training, skill, experience or interest in the operation of sewer utilities, municipalities, special purpose districts or in other related fields. Board members must commit to becoming educated about the Brightwater plant systems, operations, likely sources of odor complaints, and possible solutions. The Board will make recommendations to King County's Wastewater Treatment Division and/or the King County Executive, where requested. The terms of service for board members shall be staggered as established by King County. Administrative support to the Air Quality Board shall be furnished by King County.

(i) Odor Control Reserve Fund Budget. King County has agreed to meet the "no detectable odor" standard as required in this agreement for the duration of the operation of the Brightwater plant. To ensure that funds are immediately available to begin addressing any unanticipated odor issues, King County agrees to budget $3 million in its annual capital facilities budget as an Odor Reserve Fund. These funds are to be used as needed exclusively for capital odor control facilities or other improvements to the Brightwater plant, should such measures become necessary. The amount of $3 million shall not be considered a limitation on King County's obligation to meet the odor control standards in this Agreement. The Brightwater Air Quality Board will make recommendations on appropriate uses of this fund.

(j) Compliance with Applicable Odor Codes and Regulations. The Parties agree that the odor commitments set forth above constitute compliance with and reasonable and adequate

mitigation for purposes of Snohomish County's existing Odor Ordinance and development regulations, the Binding Site Plan review process, and the building permit review process for the Brightwater project.

3.2 Seismic Investigation and Construction Standards

(a). Additional Seismic Investigation and Trenching Required. King County has previously performed seismic investigation and trenching at the Highway 9 proposed plant site as a result of the King County Hearing Examiner's decision on seismic issues in an appeal of the Brightwater Final EIS. The investigation revealed the presence of an active fault on the northern portion of the site (lineament 4). King County agrees to construct two additional trenches across portions of the site in between lineament 4 and the postulated lineament X (located on the southern portion of the site), in order to prevent the placement of certain chemical facilities over unknown seismic faults and to minimize the risk of a chemical spill or release during a seismic event.

(b). Definition of Active Fault: For purposes of this Development Agreement, the definition of an "active fault/active fault trace" shall be the definition contained in the 2003 International Building Code, Section 1613.1, which provides:

> A fault for which there is an average historic slip rate of 1 mm per year or more and geologic evidence of seismic activity within Holocene (past 11,000 years) times. Active fault traces are designated by the appropriate regulatory agency and/or registered design professional subject to identification by a geologic report.

(c). Investigative Protocol. King County shall prepare the following trenches:

i. For the proposed location of the south chemical storage building (the acids chemical storage building), King County will construct a trench at the proposed footprint of the acids chemical storage building. The exact length and orientation of this trench shall be determined by King County based upon the existing geological information and the recommendations of the US geological Survey, Snohomish County and King County seismic consultants.

ii. For the proposed location of the north chemical storage building (the alkaline chemical storage building) because the construction of a trench in the exact location of the proposed building footprint is not reasonable or feasible given the current uses, the existing roads and underground utilities at that location, a trench shall be constructed east of the proposed alkaline chemical storage building footprint. The exact length and orientation of this trench shall be determined by King County based upon existing geological information and the recommendations of the US Geological Survey, Snohomish County and King County seismic consultants.

iii. In the event that the investigative protocol described above discloses the presence of a an "active fault/active fault trace" meeting the 2003 IBC definition within the foundation footprint of one or more of the chemical storage buildings, the Parties agree that

King County will move the chemical storage building(s) fifty (50) feet back from the active fault/fault trace, unless such location renders the chemical storage building's purpose in interacting with the treatment works infeasible. In that event, King County shall locate the building as far away from the active fault/fault trace as feasible, but in no case may the location be less than 25 feet from the location of the identified active fault trace.

(d). Seismic Design Standards Applicable. In light of the existence of certain seismic faults and/or lineaments on portions of its property, King County further agrees to follow the seismic design standards set forth in Chapter 16 of the IBC, 2003 Edition in designing all structures on the Brightwater Wastewater Treatment Plant site at Highway 9.

(e). Vesting and Compliance with Adopted Standards. For purposes of this Development Agreement, Snohomish County and King County agree that compliance with the terms and conditions set forth in this Section 3.2 fully satisfy Snohomish County Emergency Ordinance No. 05-030 ("Seismic Ordinance") to the extent that it is still in existence at the time of the execution of the Settlement Agreement and applicable to the Brightwater facilities. Notwithstanding the provisions of Section 2.2, above, which govern the timing of vesting to the standards and requirements of the Snohomish County Code under this Agreement, the parties agree that King County is vested to Emergency Ordinance No. 05-030 at the time of execution of this Development Agreement.

(f). Emergency Spill Response. King County's wastewater treatment facility at the Highway 9 site will be designed to temporarily contain a spill of up to 4 million gallons of materials from above-ground structures located within the boundaries of its site during an emergency situation. King County may use any site features such as stormwater ponds, or landscaping to accomplish such emergency spill containment. King County will prepare an emergency spill response plan for the Highway 9 treatment facilities and provide at least two (2) copies of the Plan to PDS for its records.

(g). Compliance with Applicable Seismic Codes and Regulations. The Parties agree that the seismic investigation and mitigation set forth above constitutes reasonable and adequate seismic investigation and mitigation of seismic impacts of the Brightwater project for purposes of Snohomish County's existing Seismic Ordinance, applicable development regulations, the BSP review process, and the building permit review process for the Brightwater project. Snohomish County further agrees that the existing SEPA documentation (the FEIS and SEIS) and its discussion of seismic conditions at the Route 9 treatment plant site and along the conveyance line is reasonable and adequate for the construction and operation associated with all Brightwater project permits and administrative approvals. No further environmental review is required under SEPA and Chapter 43.21C RCW or Chapter 30.61 SCC.

4.0 REVIEW AND ISSUANCE OF OTHER BRIGHTWATER PERMITS

The BSP process for the Brightwater project is addressed above. All other permits are governed by this section. The following permit applications shall be submitted by King County outside of the BSP process set forth in Section 1.0 herein. These permits shall be exempt from any

administrative, Type 1 or Type 2 appeal provisions because environmental review for these permits has been completed pursuant to 43.21C RCW and chapter 30.61 SCC and therefore these permits are exempt from the provisions of 30.71 SCC. The issuance of these permits shall be issued administratively. The decision of Snohomish County staff on these permits shall be the final decision of Snohomish County on these permits.

4.1 Treatment Plant Building Permits

King County shall submit a package containing approximately 16 building permit applications for the entirety of the wastewater treatment facility structures to be constructed on the Route 9 site. King County expects to submit a complete building permit application package no later than June 27, 2006.

(a). Permitting Procedure. The building permits shall be reviewed and issued by the PDS Director. The permits shall be conditioned upon receipt of a final decision approving the BSP by the Hearing Examiner. Snohomish County shall review the completed application and determine if it meets the applicable provisions of the Snohomish County Code governing such permits within eight (8) months of the receipt of such building permit applications. The decision of the Director shall be a final decision subject to appeal under Ch. 36.70C RCW. The treatment plant building permits shall expire 60 months after issuance by Snohomish County.

(b). Renewal and Fees. The treatment plant building permit(s) may be renewed prior to the expiration date for an additional period of 24 months upon payment by King County or its successor/assignee in the amount of fifty percent (50%) of the original building permit application fee to Snohomish County. This fee will be assessed only for those buildings needing renewed permits. Upon expiration of the renewal period, King County shall be required to apply for a new building permit application subject to the terms and conditions of the Snohomish County Code in effect at that time.

(c). SEPA Compliance. Snohomish County agrees that SEPA review on this project was a comprehensive project level review which identified all the significant adverse environmental impacts associated with the buildings included in the Brightwater Project. Snohomish County has evaluated the SEPA documents and in this Development Agreement has imposed the mitigation authorized under RCW 43.21C.060. As such the provisions of Chapter 30.71 SCC will not apply.

(d). Special Inspections. All special inspections required by the quality assurance plans set forth in any building permits approved by Snohomish County shall be performed at King County's sole cost and expense by qualified, independent inspection personnel, certified as a testing and inspection agency by the Washington Association of Building Officials (WABO) and shall have accreditation (or an application pending) for compliance with ASTM E 329, as modified by WABO Standard No. 1701. Copies of certifications shall be provided to Snohomish County for all inspection personnel performing special inspections on the Brightwater project.

4.2. North Mitigation Area Grading and Building Permits

King County shall submit requested revisions to Snohomish County for its pending grading and building permit applications for the North Mitigation Area on or before October 13, 2005. Snohomish County shall review the completed application and determine if it meets the applicable provisions of the Snohomish County Code governing such permit upon approval of this Agreement.

4.3 Haul Route Agreement and Right-of-Way Use Permits for the North Mitigation Area

King County has previously submitted proposed Haul Route Agreement(s) and right-of-way use permit applications to Snohomish County. Snohomish County agrees to review the completed applications and proposed haul route agreement(s) and will determine if these documents meet the applicable provisions of the Snohomish County Code governing such permits upon approval of this Agreement.

4.4 Portal 19 Grading and Building Permit

King County shall submit a complete application for these permits on or before January 31, 2006. Assuming King County submits its applications by that date, Snohomish County shall review the completed applications and determine if they meet the applicable provisions of the Snohomish County Code governing such permits no later than May 15, 2006.

4.5 Portal 19 Right-of-Way Use Permit

King County shall submit a complete application for this permit on or before January 31, 2006. Assuming King County submits its applications by that date, Snohomish County shall review the completed application and determine it meets the applicable provisions of the Snohomish County Code governing such permits no later than May 15, 2006.

4.6 Treatment Plant Site Preparation Grading Permit with Right-of-Way Use Permit

King County shall submit a completed application for this permit on or before November 30, 2005. Assuming King County submits its applications by that date, Snohomish County shall review the completed application and determine if it meets the applicable provisions of the Snohomish County Code governing such permit no later than March 31, 2006. Such permit shall state that it is effective only upon receipt of a final decision approving the BSP by the Hearing Examiner.

4.7 Portal 46 Grading Permit with Right-of-Way Use Permit

King County has already submitted a completed application for this permit. Snohomish County shall review the completed application and determine if it meets the applicable provisions of the Snohomish County Code governing such permit no later than January 4, 2006. Such permit shall state that it is effective only upon receipt of a final decision approving the BSP by the Hearing Examiner.

4.8 Treatment Plant Grading Permit with Right-of-Way Use Permit

King County shall submit a completed application for this permit on or before February 15, 2006. Assuming King County submits it application by that date, Snohomish County shall review the completed application and determine if it meets the applicable provisions of the Snohomish County Code governing such permit no later than November 7, 2006. Such permit shall state that it is effective only upon receipt of a final decision approving the BSP by the Hearing Examiner.

5.0 APPEALS

5.1 BSP Appeal

The Hearing Examiner's decision on the BSP permit shall be the final decision of Snohomish County on the BSP. Appeals of the decision shall be filed in accordance with the provisions of the Land Use Petition Act (Ch. 36.70C RCW). The filing of an appeal shall not automatically stay the effectiveness of a permit and King County may proceed at its sole discretion and risk to act in accordance with any permit challenged under this section.

5.2 Other Permit Appeals

For all other Brightwater Project permits and approvals, the decision of the Director shall be the final land use decision of the County. Appeals shall be brought directly to Superior Court in accordance with the provisions of the land use petition act (Ch. 36.70C RCW). The filing of an appeal shall not automatically stay the effectiveness of a permit and King County may proceed at its sole discretion and risk to act in accordance with any permit challenged under this section.

6.0 RESERVATION OF RIGHTS.

Pursuant to the requirements of RCW 36.70B.170 and SCC 30.75.100(4), Snohomish County reserves the right to impose new or different conditions on the Brightwater facilities to the extent required by a serious threat to public health and safety.

7.0 TERM OF THE AGREEMENT

This Development Agreement shall govern the Brightwater Wastewater Treatment System facilities located at the Highway 9 plant site and related facilities off-site within areas of unincorporated Snohomish County constructed hereunder, for a period of thirty-five years from the date of execution of this Agreement. Pursuant to RCW 36.70B.170(3)(i) Snohomish County agrees that the Snohomish County Code as it exists at the date that this Development Agreement is executed shall govern the permitting for the Brightwater Project.

8.0 RECORDING; BINDING EFFECT

This agreement shall be recorded with the real property records of the Snohomish County Auditor and shall be binding during its term upon the parties, and their successors, including any

city that assumes jurisdiction through incorporation or annexation of the area covered by this Development Agreement.

IN WITNESS WHEREOF the parties have executed this Development Agreement this ___ day of _____, 2005.

SNOHOMISH COUNTY	KING COUNTY
_____	_____
By: Aaron G. Reardon County Executive	By: Ron Sims County Executive
Approved as to form:	Approved as to form:
_____	_____
Millie Judge Assistant Chief Civil Deputy Prosecuting Attorney	Verna Bromley Senior Deputy Prosecuting Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument, and acknowledged it as the _____ of Snohomish County, a municipal corporation, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this ____ day of _____, 2005.

_____
(Signature of Notary)

_____
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington, residing at _____

My appointment expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument, and acknowledged it as the _____ of King County, a municipal corporation, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this ____ day of _____, 2005.

_____
(Signature of Notary)

_____
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,
residing at _____

My appointment expires _____

EXHIBIT 1

BINDING SITE PLAN SUBMITTAL REQUIREMENTS

The Binding Site Plan Submittal shall consist of the following elements:

1. To address requirements for Noise Control (SCC 30.41D.100(2)):

    - KC will submit narrative showing how county noise ordinance will be met.

2. To address requirements for public or private roads, right-of-way establishment and permits, accesses, and other applicable road and traffic requirements (SCC 30.41D.100(3)):

    - KC will submit a site plan with road layout, access points off SR9, ROW, clear zone, and temporary construction easements for WSDOT.

    - KC will re-submit its concurrency form pursuant to Ch. 30.66 SCC.

    - KC will provide a letter stating that no traffic changes from the last two traffic analysis provided to Snohomish County, along with the traffic studies.

    - KC will forward an executed copy of the Haul Route Agreement(s) applicable to the project.

3. To address compliance with fire lane, emergency access, fire-rated construction, hydrants and fire flow (SCC 30.41D.100(4)):

    - KC will submit a site plan showing roads that are at least 20 feet wide with any turnarounds of 40 feet in diameter. If no turnarounds will be used, KC will show how fire trucks will move internally with correct radius provided at corners.

    - KC will describe the fire flow required for the site. If hydrant locations are known, then KC will show then on the site plan.

    - KC will provide documentation of how the buildings on site are fire rated.

4. To address compliance with applicable construction code requirements (SCC 30.41D.100(5):

    KC will submit a statement indicating that King County will comply with applicable construction code requirements in the construction of Brightwater.

5. To address compliance with applicable use and development standard requirements (SCC 30.41D.100(6)):

- Using the zoning matrix in the County Code, show how the site fits with use of all zones, including FS.
- KC will provide a Parking Study.
- KC will submit a Landscape Modification request.

6. To address compliance with environmental policies and procedures, critical areas regulations, groundwater protection regulations and resource lands requirements (SCC 30.41D.100(8)):

- For purposes of demonstrating mitigation of impacts disclosed through SEPA review, show how project has complied with mitigation described in the FEIS and SEIS.

- Critical areas regulations– KC will submit CAR, CASPs and Critical Areas Pre-application file materials.

- KC will provide a narrative of how the project complies with groundwater protection regulations.

- KC will provide a report of how site has been designed for seismic hazards, especially in reference to the FEIS and SEIS.

- KC will provide a copy of the Facility Plan and approval letter from Ecology to show backup power.

7. To address compliance with applicable drainage requirements (SCC 30.41D.100(9)):

- KC will submit a targeted drainage review and site plan. The plan will include volume of runoff, downstream analysis, scale view and cross-section of ponds.

8. To address applicable sewerage regulations and provisions for adequate water supply and refuse disposal (SCC 30.41D.100(11):

- KC will submit a statement that wastewater generated on-site will be processed on site.

- KC will provide a letter from the Cross Valley Water District of its intention to supply water to the site.

9. Other items to be submitted:

- Certificate of Title indicating property ownership;

- Declaration of Binding Site Plan with Record of Survey;

- Site plan showing existing and proposed easements (existing easements to have the recording number);
- A legal description;
- Survey to be completed that shows closure of boundaries using survey practices as required by state law;
- Final Geotechnical Report and Recommendations;
- Document the intent to extinguish the existing binding site plan for Woodinville North Business Park;
- Binding Site Plan (for area south of UGA, not including NMA) to show property boundaries, road layout, parking areas, building locations, NGPA for Howell Creek and steep slopes on east side of property and any NGPA from critical areas on the north of UGA, detention ponds, and landscape area in general terms;
- An Emergency Spill Response Plan
- Quality Assurance Plan.

EXHIBIT 2

Definitions of "Minor" and "Major" Revisions

For purposes of Chapter 30.41D.320 SCC the following definitions of "Minor" and "Major" revision shall apply:

(a) A "minor" revision means any proposed change which does not involve substantial alteration of the character of the prior approval, including increases in a building footprint of no more than 10 percent.

(b) A "major" revision means any expansion of the lot area covered by the permit or approval, or any proposed change whereby the character of the approved development will be substantially altered. A major revision exists whenever intensity of use is substantially increased, performance standards are reduced below those set forth in the original permit, detrimental impacts on adjacent properties or public rights-of-way are created or substantially increased, including increased trip generation in excess of 211 peak hour trips (the number of trip credits from existing businesses that the Brightwater project displaced through redevelopment of the site), or the site plan design is substantially altered.

EXHIBIT 3

Executive Summary

King County Brightwater Odor Control System
Preferred Alternative Design 165E

Brightwater
King County TREATMENT SYSTEM

EXHIBIT B TO THE SETTLEMENT AGREEMENT

Snohomish County Mitigation Project List

	Project	Impact Addressed / Nexus	King County Portion of Total Project Cost	Comments
	Recreation			
	Maltby Area Park - Approx. 40 acres within 4 miles of treatment plant site.	Community Mitigation - active recreation	$ 16,900,000	This project will provide primarily active recreation facilities for the broad community surrounding the treatment plant site. The community and potential user groups will be included in the design process that will be lead by Snohomish County. Multiple locations are currently being considered; this funding is for acquisition and development of this active recreation facility.
	Tambark Creek Park - Park Development	Community Mitigation - active recreation	$ 8,000,000	This project will provide active and passive recreation for the broad community surrounding the treatment plant site. The existing site master plan, with possible amendments to reflect new design preferences will be the basis of design by Snohomish County. The property is currently in Snohomish County ownership; this funding is for park development.
	39th/228th Park Facility - Land Acquisition	Community Mitigation - active recreation	$ 2,200,000	This project will provide a community park near the treatment plant site; this funding is for land acquisition.
	39th/228th Park Facility - Park Development	Community Mitigation - active recreation	$ 3,300,000	This funding is for park development at the 39th/228th location referenced above. The community will be included in the design process that will be lead by Snohomish County.
	Recreation	**Subtotal**	**$ 30,400,000**	
	Community Resources			
	Community Resource Center	Community Mitigation - education and meeting facility	$ 2,950,000	King County agrees to provide at Snohomish County's request the use of the Educational and Community Center that shall be constructed on the Brightwater treatment plant site for use by government agencies and bona fide nonprofit organizations located within Snohomish County at no charge if the Center is to be used by the government agency or nonprofit organization to provide services that will benefit the public. This equates to high, long-term value based on facility use and is estimated at 2.95 million dollars.
	Community Resources	**Subtotal**	**$ 2,950,000**	
	Public Safety			
	Sno-Wood Road (3 lane widening)	Community mitigation - safety and operational improvements	$ 1,630,000	This project will widen the Snohomish-Woodinville Road to 3-lanes between SR522 and Woodinville city limits. This improvement will provide ease of traffic movement to and from the treatment plant site.
	228th St. SE - 39th to SR-9 (addition of pedestrian sidewalks and bike lanes)	Community mitigation - pedestrian connections	$ 12,200,000	This project will provide sidewalks and bicycle lanes along 228th SE between 39th Ave and SR-9 facilitating safe pedestrian and bicycle access to public spaces located on the Brightwater site. The project will be designed to include natural drainage systems where practical.
	45th Ave SE - 240th to 212th (north and south of 228th), addition of pedestrian sidewalk on one side.	Community mitigation - pedestrian connections	$ 4,600,000	This project will provide a sidewalk along 45th Ave SE between 240th and 212th SE facilitating safe pedestrian access to public spaces located on the Brightwater site. The project will be designed to include impervious sidewalks where practical. Minor road widening may be included to match curb if installed.

Snohomish County Mitigation Project List

	Public Safety continued			
	49th Ave SE - 236th to 228th, addition of pedestrian sidewalk on one side.	Community mitigation - pedestrian connections	$ 1,280,000	This project will provide a sidewalk along 49th Ave SE between 236th and 228th SE facilitating safe pedestrian access to public spaces located on the Brightwater site. Design will include low impact development techniques where practicable, such as pervious concrete. Minor road widening may be included to match curb if installed.
	53rd Ave SE - 233rd to 228th, addition of pedestrian sidewalk on one side.	Community mitigation - pedestrian connections	$ 1,370,000	This project will provide a sidewalk along 53rd Ave SE between 233rd and 228th SE facilitating safe pedestrian access to public spaces located on the Brightwater site. Design will include low impact development techniques where practicable, such as pervious concrete. Minor road widening may be included to match curb if installed.
	57th Ave SE - 236th to 228th, addition of pedestrian sidewalk on one side.	Community mitigation - pedestrian connections	$ 1,530,000	This project will provide a sidewalk along 57th Ave SE between 236th and 228th SE facilitating safe pedestrian access to public spaces located on the Brightwater site. Design will include low impact development techniques where practicable, such as pervious concrete. Minor road widening may be included to match curb if installed.
	North Creek Trail, Bothell to Mill Creek (North Creek Park to Filbert Road).	Community mitigation - pedestrian connections	$ 3,240,000	This project provides for the planning, public involvement and ROW acquisition to develop a new multi-use trail segment between North Creek Park and Filbert Road (SR524). The community will be included in the design process that will be lead by Snohomish County.
	Broadway, SR 524 - 164th Street SE., addition of paved shoulders.	Community mitigation - pedestrian connections	$ -	This project is estimated to cost $1,000,000 and will be completed and funded with any savings realized after completion of all other public safety projects on this list. It will provide paved shoulders for safer bicycle travel along Broadway Ave.
	Public Safety	**Subtotal**	**$ 25,850,000**	
	Habitat Mitigation			
	Little Bear Creek Headwater Forest Preservation	Community mitigation - habitat	$ 4,500,000	Funding is for acquisition of Little Bear Creek headwater watershed to preserve fish habitat.
	Cutthroat Creek Headwaters Preservation	Community mitigation - habitat	$ 1,000,000	Funding is for acquisition of Cutthroat Creek headwater watershed to preserve fish habitat.
	Middle Little Bear Fens Preservation	Community mitigation - habitat and potential multiple use	$ 4,000,000	Funding is for acquisition of Little Bear Creek watershed to preserve fish habitat.
	Little Bear Creek Fish Passage	Community mitigation - habitat	$ 1,300,000	This funding is for replacing/upgrading approximately 22 culverts to facilitate and improve fish passage. These culvert improvements will involve community-based non-profit organizations) where practical.
	Habitat Mitigation	**Subtotal**	**$ 10,800,000**	
		Total	**$ 70,000,000**	

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 84inches 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 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 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. Not-withstanding 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: _____ Dated:_____

Title:_____

Approved as to form : _____
Prosecuting Attorney

CITY OF WOODINVILLE

By: _____ Dated:_____

Title:_____

Approved as to form: _____
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.