

15553

2006-287

Attachment A

Cross Valley Water District and King County Wastewater Treatment Division Mitigation Agreement

This Agreement is made and entered into by King County, a municipal corporation acting through the King County Wastewater Treatment Division, hereinafter referred to as "County," and Cross Valley Water District, a municipal corporation, hereinafter referred to as the "District." County and District may also be collectively referred to as the "Parties."

RECITALS:

- A. The County issued its Final Environmental Impact Statement ("FEIS") for the County's Brightwater Wastewater Treatment System project (the "Project") on November 19, 2003.
- B. Although the District filed a Notice of Appeal of the Project with the County on November 28, 2003, it is no longer pursuing this appeal.
- C. The District reviewed the FEIS and did not file a Statement of Appeal by the deadline for filing such appeal on January 20, 2004 in part due to the County's agreement to execute an agreement mitigating certain aspects of the Project.
- D. The FEIS itself calls for future discussions on mitigation of impacts as the Project becomes better defined through the pre-design, design and permit application processes. This continuing process has led to the preparation and issuance of four (4) Addenda to the Brightwater EIS which spell out in greater detail possible mitigation measures.
- E. The District has a duty to the community to which it supplies water and a legal interest in protecting its water sources and supply resources. It wishes to address the future possibility that the tunneling and associated construction dewatering within the Cross Valley Water District area may have certain impacts. The Parties agree that the likelihood of these impacts actually occurring is remote and speculative. Nonetheless, the parties agree to address, in advance, possible mitigation measures that King County will commit to as a reasonable safeguard.
- F. The Parties desire to enter into this agreement to set forth the measures to be undertaken by the Parties.

NOW, THEREFORE, in consideration and mutual covenants and conditions set forth herein the Parties agree as follows:

I. Purpose

This Agreement requires the County to:

- A. Compensate the District and other parties for the cost of certain community mitigation measures associated with the Project, and
- B. Construct certain improvements, and
- C. Engage in specific tasks relating to geotechnical investigation, design, construction, operation, and
- D. Provide community incentives and mitigation for the Project, an essential public facility, which may impact the Cross Valley sole source aquifer.

This Agreement defines the compensation to be paid and the work ("Work") to be conducted as part of the Project as described in Attachment 1. Attachment 2 contains certain definitions that are used in this Agreement and in Attachment 1. Attachment 3 describes a list of pre-authorized services that District may utilize and be reimbursed for during the course of the Project. Attachment 4 is a form Statutory Warranty Deed and Assignment of Sewer Easements. Attachment 5 is a list of current existing sewer and water utility easements in favor of the District affecting the Route 9 site and Attachment 6 is a map of the existing on-site utility easements. Attachments 1 through 6, inclusive, with their accompanying schedules and attachments are incorporated herein by this reference as though fully set forth hereat.

II. Project Management

The County shall let, pay for, manage and administer all contracts, personnel and contractors engaged in the Work except the Work described in Paragraph 2 of Attachment 1 and except as mutually agreed otherwise and subject to the District's specifications and requirements for construction of water and sewer system improvements.

III. Responsibilities

A. The District shall:

1. Have access to the County's monitoring Work under this Agreement and review reports and data generated by the County as result of the Work, and when appropriate or required by this Agreement, issue comments or decisions with respect to such reports and data.
2. Not have any obligation to County except as expressly provided in this Agreement.

B. The County shall:

1. Perform the Work whether through its own personnel or through contracts with third parties for the Work except the Work described in Paragraph 2 of Attachment 1 and except as mutually agreed otherwise and subject to the District's specifications and requirements for construction of water and sewer system improvements.
2. Give due consideration to District's comments regarding the Work performed by the County.
3. Pay for any expenses incurred by the District as the result of Work that has been preauthorized by the County, whether on a case by case basis or as set forth in Attachment 3.
4. Provide access to the Project within and near the treatment plant site and any groundwater or surface water monitoring facilities associated therewith during the course of the Project construction for evaluation and inspection purposes subject to reasonable advance notice by District. While such access shall not be unreasonably withheld, safety and construction considerations require an advance request for such access with permission to be granted for an appropriate time. Such access shall be lead by County staff or designee.
5. Within forty eight (48) hours, deliver to the District, one (1) written copy of every, as appropriate, written report, summary, log, map and other documents containing facts, analysis or findings concerning the District's water resource interests that is generated as part of the Work or otherwise prepared in connection with the Project. This obligation shall not include routine field notes unless specifically requested by District.
6. Monitoring that is inherently part of the construction and operation of the treatment plant will have value to the District in tracking the affects of the dewatering, the implications of the disposal of stormwater and dewatering flows into the surface waters, and the chemical implications of the dewatering and stormwater management efforts to both groundwater and surface water resources.

The County agrees to provide timely and effective access to the data generated by the near-site monitoring systems and to apprise the district of any substantial changes in the nature or frequency of such monitoring. The County shall notify the District within 24 hours of any inflow into the tunnel greater than 200 gpm or continuous dewatering in excess of 600 gpm.

IV. Definitions

The terms and definitions in Attachment 2 to this agreement shall apply.

V. Costs, Billing, and Payment

The Parties agree to the following regarding project costs:

A. The County shall pay the entire actual costs for the Work.

B. The District shall pay for all costs of its consultants; provided, however, County shall within 30 days after receipt of appropriate documentation pay to District as reimbursement for eligible documented costs incurred to date, up to a maximum of \$175,000.

In addition, the County shall reimburse District for its reasonable and continuing costs of participating in County project meetings as invited, reviewing and commenting on the progress of the monitoring of construction and operation through the term of the Project and other requested reviews according to the scope of services and rate and reimbursement schedule in Attachment 3. District shall provide written documentation of such costs. Any consultants and/or subcontractors used by the District to fulfill its obligations under this Agreement shall be retained solely by the District, shall be identified in any billings and shall be subject to the scope of services and the total cost ceiling set forth in Attachment 3. Any such consultant or subcontractor must be qualified and if applicable, licensed in the state of Washington to perform the services for which they are engaged. Such consultant or subcontractor will perform work consistent with the expectations of their profession and applicable regulations. Such consultant or subcontractor shall be considered an independent contractor for the District. They shall not be deemed to have any contractual relationship with the County and the County shall have no obligation to pay such consultants or subcontractors. The District may submit consultant and or subcontractor invoices for reimbursement. All such invoices for consultants and subcontractor services shall be submitted to the County for reimbursement without markup.

The District shall be responsible for ensuring the accuracy and propriety of all billings. The County shall have the right to audit the District's invoices and all supporting documentation for purposes of compliance with this agreement for a period of six years following the completion of the work under this agreement. All books, records, documents and other material relevant to this agreement will be retained for six years and the County, the Office of the State Auditor and federal auditors shall have full access and the right to examine any of these materials during this period.

C. The County represents that funds to pay the costs of the Work are currently included in the Project budget and are committed and available. To the extent that the Work requires the approval of, existence and continuation of the Project, the Parties' obligations under this agreement are contingent upon the continuation of the Project at the Route 9 Site. If the Project is terminated for any reason, then this Agreement will also terminate effective immediately and certain activities undertaken as part of this Agreement then in progress will be closed as soon as possible. If the Agreement is terminated for the reasons set forth herein, then the County's obligation will be only for payment in accordance with the terms of this Agreement for services rendered until activities related to this agreement can be closed.

Notwithstanding any other provision hereof, County's obligations hereunder shall nevertheless survive the termination of this Agreement or the Project if Work has been constructed in an area that has the potential to impact the water resource interests of the District.

The County may also terminate this Agreement, in whole or in part, in writing, for lack of appropriation for the Project. If expected or actual funding is withdrawn, reduced or limited in any way for the Project prior to the termination of this Agreement, or in any amendment hereto, the County may, upon written notice to the District, terminate this Agreement in whole or in part. As long as the Project is authorized to be constructed at the Route 9 site or Work is being undertaken on the Project at the Route 9 site, this Agreement may not be terminated.

Within three (3) months of execution of this Agreement, the County will present and recommend for approval this Agreement to the County Council for its legislative approval, so that upon such approval the termination for lack of appropriation clause set forth above shall have no further force or effect.

D. All equipment produced or acquired with funds provided by the County, except as specifically identified within the Agreement, shall be the property of the County and shall be disposed of as instructed by the County. All equipment produced or acquired with funds provided by the District, except as specifically identified within the Agreement, shall be the property of the District and shall be disposed of as instructed by the District.

VI. Duration, Termination, Amendment and Other

A. This Agreement shall be effective and commence upon mutual execution by the Parties and shall, unless terminated as set forth above, remain in effect until the Work in Attachment 1 is completed.

B. This Agreement may be amended, altered, clarified, or extended only by the written agreement of the Parties hereto.

C. This Agreement shall not be assignable by either Party, either in whole or in part except in the event of assumption, consolidation, merger or operation of law.

D. This Agreement is the complete expression of the understanding of the Parties regarding the subject matter hereof and any oral or written representations or understandings not incorporated herein are hereby expressly excluded. The Parties recognize that time is of the essence in the performance of the provisions of this Agreement. Waiver of any default shall not be deemed to be waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written amendment approved by the Parties.

E. The Parties shall use reasonable efforts to mediate any dispute arising under this agreement. In the event of such a dispute, the aggrieved party shall prepare and deliver to the other Party a brief written statement of its claims. Such statement shall not be admissible in evidence in any subsequent court proceedings. Each Party shall then designate, in writing, not more than 3 candidates it proposes to act as a non-binding mediator within ten (10) days following delivery of the written claim. If the Parties cannot agree on one of the mediators from the combined list within five (5) days, 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, with each Party paying one-half of the costs. The mediator shall determine reasonable procedures. Testimony and briefing provided to the mediator shall be inadmissible in 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. The prevailing party in such litigation as determined by the court may recover its reasonable attorney fees and costs from the other Party, provided that, such recovery shall not include the cost of mediation. The Parties shall have the right of specific performance of the terms of this Agreement.

F. The District agrees that the mitigation measures previously committed to by the County and the County's commitments set forth herein adequately address the District's concerns about the effects of the Project on the District's water resources. The District therefore agrees not to object to or appeal the issuance or approval of any federal, state or local permit for the Project, including but not limited to, the Binding Site Plan Permit, Development Agreement, Project building and/or construction permits, the 404 permit or the NPDES permits concerning the Project.

G. Attachments 1 through 6 attached hereto are hereby incorporated by reference as if set forth in full herein.

H. The obligations set forth in this Agreement are conditioned upon AWWD and CVWD reaching an agreement regarding the interim water supply described in section 2 of Attachment 1 of this Agreement.

VII. Indemnification and Hold Harmless

The County shall protect, defend, indemnify, and save harmless the District from any and all damage caused by King County to the District's water sources, the Cross Valley sole source aquifer and the near-surface and surface water features within the District. The County shall make the District whole, as defined in Attachment 2 and provide an alternative water supply if the Project causes damage to the aquifer or otherwise impacts the District's water supply. The County shall indemnify the District against impacts from the Brightwater project to shallow groundwater or surface water features that demonstrably exacerbates the difficulty of the District acquiring additional water rights in the future. Such indemnification will be in the form of a commitment to mitigate project impacts to surface water bodies anytime they have the potential to complicate water resource allocation or management that involves the District's water resource interests. Such mitigation may be in conjunction with or as part of a broader mitigation activity by other parties.

Each Party shall protect, defend, indemnify, and save harmless the other Party, its officers, officials, employees, and agents, while acting within the scope of its employment as such, from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from either Party's own negligent acts or omissions. Each Party agrees that its obligations under this paragraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each Party, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event that either Party incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this Article, all such fees, expenses, and costs shall be recoverable from the responsible Party to the extent of that Party's culpability.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the _____ day of _____, 20____.

Cross Valley Water District:
By: _____
Title: _____

King County:
By: _____
Title: Director, King County, Department of

Exhibit 1 – Work to be Performed

1. Accommodation of Impact to 30" Trunk Sewer. To manage the decline in flows and the resulting increase in operation and maintenance costs of the 30" trunk sewer constructed by the District and Alderwood which connects to the County's Little Bear Creek Trunk, the County shall assume ownership and operation and maintenance of this 30" trunk sewer line in both Snohomish and King Counties. The cost to be paid to the District by County for this 30" trunk sewer is \$3,311,714.82, minus a credit in the amount of \$326,377.27, calculated by the District based upon a value of \$3,936.05 per acre times 82.92 acres assessed. The amount due shall be referred to as the "Net Amount Due." The Net Amount Due includes the remaining balance due to the District in the amount of \$680,879 as described in the Lower Bear Creek Acquisition Agreement dated October 24, 2000. Upon payment of the four (4) remaining unpaid assessments as of the date of this Agreement (for properties known as Crane, Stockpot, Rennebohm and House) and the Net Amount Due, the District agrees to record a Satisfaction and Release of Assessments in the real property records of Snohomish and King Counties for this 30" trunk sewer. As set forth in the Lower Bear Creek Acquisition Agreement the District will take such other actions as may be reasonably requested by the County to further formalize the transfer of said 30" trunk sewer and its appurtenant structures, together with all easements, decrees of appropriation, judgments and access rights to the County, including a Statutory Warranty Deed and Assignment of Sewer Easements in substantially the form attached as Attachment 4, which is incorporated herein by this reference. This Statutory Warranty Deed and Assignment of Sewer Easements shall be recorded in the real property records of Snohomish and King Counties. Payment will be made to the District concurrently with the execution of Attachment 4. The District agrees to provide the appropriate refund to the Alderwood Water and Wastewater District ("AWWD") for AWWD's portion of the trunk sewer located in Snohomish County and King County.

To allow full utilization of this 30" trunk sewer line, the District has agreed to provide and the County has agreed to pay for design and construction services for the upgrading of the 15" wastewater line at 233rd and SR9 to a 30" line from District manhole C47A to DMHC48 (referred to as the 233rd Upgrade), as more fully described in the County's letter to the District dated November 10, 2004, incorporated herein by this reference.

2. Interim Water Supply Provisions.

The County and the District agree that the anticipated potable water needs during construction, startup and commissioning of the treatment plant and for site irrigation exceed the supply that the District can provide without further improvements. Once the plant and thus the reclaimed water system is fully operational, the potable water supply needs of the plant will drop to approximately 20 gallons per minute. If additional capacity is required for the construction of the Brightwater Project, then the District and County agree to work out how the supply is to be provided. In order to meet the construction, startup, commissioning and irrigation needs, the District agrees to support and assist the County in developing the needed infrastructure, approvals and permits to utilize the existing connection to AWWD supply line at the corner of SR9 and 228th. The District does not guarantee the approval of AWWD.

Additionally, as set forth in the November 10, 2004 letter, the District has agreed to provide and the County has agreed to pay for design and construction services for the installation of a 12" water pipeline from approximately 228th and SR9 to the end of the WSDOT SR9 Road Widening project near SR 524/Maltby Road and SR9 (referred to as the Clearview Pipeline Section 1)

3. Relocation, Termination or Transfer of Existing Water and Sewer Improvements on Project Site. Attached hereto as Attachment 5 is a list of the existing water and sewer easements granted in favor of District. Attached hereto as Attachment 6 is a map of the on-site water and sewer easement utility pipelines.

a) Relocation/Modification. The County shall relocate at the County's sole expense the

existing District water system improvements located on the Project site that must be maintained to serve its customers, indicated as Water Lines to be Relocated/Modified on Attachment 5. Such work shall be constructed pursuant to the terms of one or more Water and Sewer Developer Extension Agreement(s) with the District. To the extent requested by King County, the District shall terminate and extinguish, without any additional cost to King County, any easements for such Relocated/Modified pipelines. For such terminated easements, the District shall record a termination of such easements in the real property records of Snohomish County. The County shall reimburse the District for the actual and reasonable costs, if any, that the District incurs in recording the documents in the property records of Snohomish County and in performing surveys, if any is required to verify legal descriptions. If the Water Lines, meters and appurtenances to be Relocated, identified in Attachment 5, must be relocated again in the future due to future roadway improvements and the cost for such relocation is a legal obligation of the District as owner of the Water Lines, then the County shall pay the reasonable costs of such relocation.

b) For the easements designated as Combination Water and Sewer Pipelines set forth in Attachment 5, the District shall grant and convey to King County, without any additional cost, an undivided interest in and to the sewer portion of the easements to the extent necessary for King County to use, operate, maintain, service, repair and replace the sewer pipelines. Neither the County nor District shall grant any additional easement rights without the consent of the other Party. To the extent requested by King County, the District shall terminate and extinguish, without any additional cost to King County, any easements for on-site water pipelines which are no longer needed to serve current onsite and offsite uses. For such terminated easements, the District shall record a termination of such easements in the real property records of Snohomish County. The County shall reimburse the District for the actual and reasonable costs, if any, that the District incurs in recording the documents in the property records of Snohomish County and in performing surveys, if any is required to verify legal descriptions. King County shall have the right to remove, recycle or otherwise dispose of any such onsite water and sewer pipelines and appurtenances in any manner it deems appropriate, without notice or further compensation to the District.

c) For the easements designated as Water Only Easements set forth in Attachment 5, such easements shall either be retained by the District, be abandoned and terminated by the District or be relocated or modified by the District as described in Attachment 5. To the extent requested by King County, the District shall terminate and extinguish, without any additional cost to King County, any easements for the abandoned and terminated pipelines. For such terminated easements, the District shall record a termination of such easements in the real property records of Snohomish County. The County shall reimburse the District for the actual and reasonable costs, if any, that the District incurs in recording the documents in the property records of Snohomish County and in performing surveys, if any is required to verify legal descriptions.

d) For the easements designated as Sewer Only Easements set forth in Attachment 5, the District shall grant and convey to King County, without additional cost, such sanitary sewer facilities and improvements together with all of the District's right title and interest under such easements by way of a Statutory Warranty Deed and Assignment of Sewer Easements in substantially the form attached hereto as Attachment 4, which is incorporated herein by this reference. This Statutory Warranty Deed and Assignment of Sewer Easements shall be recorded in the real property records of Snohomish and King Counties. The County shall reimburse the District for the actual and reasonable costs, if any, that the District incurs in recording the documents in the property records of Snohomish County and in performing surveys, if any is required to verify legal descriptions.

In consultation with the District, and within 5 years of the signing of this agreement, the County agrees to prepare or fund an appropriate sewer planning technical memorandum to guide the District in connecting its local sewer to the relocated and extended County Bear Creek Interceptor acquired by the County under Sections 1 and 3 of Attachment 1 of this Agreement.

4. Acceptance of the District's Sewerage at Project Site. The District's sewerage is currently conveyed to the County's Treatment Facility at West Point in Seattle or to the South Plant in Renton depending upon the season. The County agrees that the District's sewerage shall be conveyed directly into the Project site if hydraulically possible once the Project is placed in operation rather than south to the Influent Pump Station and then to the Brightwater Plant.

5. RCE Billing Adjustments. Upon the permanent disconnection of current District sewer customers, or their successors, from the local system caused by the construction of the Project at the SR 9 site, the County shall reimburse the District for the net change in RCE for the time period between the time of said permanent disconnection and the time the RCE reduction is reflected in the monthly county sewer billings to the District. This shall be retroactive to include all disconnections on the Route 9 site as result of the project.

6. Emergency Water Line Extensions and Extension of Water Service to Snohomish County Residents. In the event that construction of the Project is the cause of damage to the water supply to any customer of the District or of AWWD or to any private well of a Snohomish County resident such that there is no longer an adequate water supply to a particular customer:

A. The County shall pay for the cost of providing emergency water line extensions to the District's customers located on the west side of the SR9 highway construction. The County shall work with AWWD to provide any emergency service required to serve customers of AWWD such that the District is not responsible for providing emergency service to AWWD customers in the vicinity. The County and the AWWD have negotiated a service agreement to address emergency service as described in this subsection. To the extent that there are differences between this paragraph and the County's Agreement negotiated with AWWD as to obligations to AWWD and/or AWWD customers, the Agreement with AWWD shall govern.

B. If, in such an event, a private well owner requests emergency and/or permanent water service from the District, the County shall at the County's option either (1) pay for the cost of extending a water main(s) to provide service to such owner and/or connection charges and meter installation charges as the case may be, pursuant to the District's current, standard Water Developer Extension Agreement or (2) assist the owner in obtaining a replacement well. If the owner meets the current regulations of the Departments of Health and Ecology for construction of a replacement well, then the District shall not object to the construction of such replacement well.

7. Reclaimed Water. The District agrees to support and advocate for the planning, development and use of reclaimed water from the Brightwater reclaimed water facility. This could include joint presentations on the benefits and opportunities of such use, support for appropriate permits, advocacy with both regulators and various local, county, state and federal agencies and legislative bodies as appropriate. The County shall include the District in its investigation of reclaimed water opportunities in connection with the Brightwater reclaimed water project.

The County will shortly be initiating a regional water supply planning process for King County that will integrate the use of reclaimed water into a comprehensive water supply plan for the County, consistent with the requirement for such a plan in state law. The regional plan will include an evaluation of the feasibility of different approaches to delivering reclaimed water where appropriate, including policy and funding issues. The District will be kept informed as policy discussions continue on regional water resources, long term water supply capacity, and the use of reclaimed water to the maximum extent feasible and appropriate. It is the intent of King County to sell reclaimed water to the District subject to the Parties reaching an agreement on a Memorandum of Understanding ("MOU") as set forth herein. King County agrees that the District will be the retail provider of reclaimed water within the District's service area, upon the condition that the

County and the District reach an agreement on a MOU setting forth mutually acceptable terms and conditions for the delivery and use of reclaimed water in the District's service area. The County and the District agree to work with one another to develop such MOU to address relevant issues, including but not limited to, the terms, conditions and pricing of reclaimed water. Nothing in this paragraph shall be construed as restricting the County's ability to use its reclaimed water on the treatment plant site for landscape irrigation and process water.

8. Representation on Regional Water Quality Committee. The County shall support the inclusion of a representative from Snohomish County on the Regional Water Quality Committee.

9. Additional Water Costs. In the event the construction of the Project by the County adversely impacts the District's water system wells and diminishes the ability of the District to serve its customers, the County shall Make the District Whole, as defined in Attachment 2 including reimbursing the District for water it must purchase from other water purveyors including actual costs incurred by the District for additional infrastructure to provide water from another source/purveyor or from additional wells. The extent of replacement of the water source set forth herein shall be based upon the actual percentage reduction or impairment of the District's current water rights caused by the Project, if any, based upon any impairment of the then existing use of the water right. The replacement source shall be chosen from the options set forth below in the order presented and shall be implemented based upon the actual percentage impairment or reduction of the District's use of its water right. For example, if the construction of the Project by the County causes an impairment or reduction in supply of 20 percent of the then existing uses, then one of the following options shall be implemented to replace the 20 percent reduction.

- a. The District shall first utilize the interim potable supply connection from AWWD as described in section 2 of Attachment 1 above. If this supply cannot be permanently secured or is otherwise not available, in a sufficient quantity to replace the percentage of water right impaired or reduced as described above, then the option in section b, or some other mutually agreeable solution, shall be implemented.
- b. The County will pay a pro-rata portion of the cost incurred by the Cross Valley Water District to complete the Clearview Pipeline connection from the north end of the pending SR 9 highway widening project as described in the earlier referenced letter dated November 10, 2004, based upon the actual percentage reduction or impairment of the District's then current water right uses.

10. Information Center. If the County constructs on or near the Project's site an information or community center, it shall include a display of information regarding the Cross Valley Sole Source Aquifer and its role as a water source to the District and Snohomish County, and its relationship with surface waters.

11. Payment for Expenses. Subject to the maximum provided in Section V. Costs, Billing and Payment, subsection B, the County shall pay the District for its reasonable and allowable costs to review the FBIS, the Technical Memos, the SEIS, any required technical evaluations related to the Project and the drafting and review of this Agreement.

In addition to the maximum amount provided in Section V and the specific mitigation described in paragraph 3 of Attachment 1 of this Agreement, King County agrees to provide to the District up to a maximum of \$70,000 as further mitigation to address all of the construction and operational impacts related to the Brightwater Project facilities within the District's service area, including but not limited to, the relocation of the District's water and/or sewer utility pipelines. The reimbursement of this amount shall be made by King County upon submittal of appropriate documentation by the District setting forth the actual reasonable cost (without markup) for, and an explanation of the District's legal requirement to incur, such costs.

12: Hydrogeologic Exploration, Monitoring and Testing

Regional Monitoring

The County and the District shall work together to obtain an easement right or fee simple title, if both Parties agree that a fee simple title is more cost effective, for placement of a regional monitoring well within the District's service area in a location between the treatment plant site and the District's source wells to the northeast of the site (e.g., Wells 9 and 10, etc.) (the Regional Monitoring Well).

King County will drill this well with an 8-inch diameter casing using cable-tool methods to assure that water level relationships are properly documented during the drilling process. The Regional Monitoring Well will be drilled and completed at the appropriate depth to correspond to the regional aquifer. The Regional Monitoring Well will be equipped with a water level data logger and transducer and a small pump suitable for acquisition of water quality samples.

The County will provide a monitoring plan that includes the proposed location, design, and instrumentation of the monitoring well and the data collection and reporting protocols. The monitoring plan must include, at a minimum, quarterly water quality analyses with tests for specific conductivity, chloride, nitrate, iron and manganese. Any statistically significant change in these parameters will trigger monthly analyses and a scan for volatile organic compounds (VOCs) in all subsequent analyses. A full analysis for inorganic constituents and volatile organic compounds will be accomplished after any sample event that shows statistically significant increase in the parameters being routinely monitored. Water sampling and analysis will initially be quarterly for two years after which time the data will be evaluated and the sampling frequency adjusted, if warranted with the concurrence of both Parties. The plan will also include water level and water quality changes that would trigger additional hydrogeologic evaluation and if appropriate, additional water quality testing. The Parties will agree as to the scope of any additional evaluation or water quality testing on a case-by-case basis. Details of the monitoring plan will be presented to the District for review and concurrence prior to installation of the Regional Monitoring Well.

County will, at its sole expense, install, test (as described above), provide necessary instruments for, and operate the Regional Monitoring Well. Assuming that the easement or property for the Regional Monitoring Well is secured by that date, the testing shall begin at least six months (or as soon thereafter as is practicable) prior to the commencement of the tunneling and associated construction dewatering activities on the Brightwater treatment plant site and continuing until 5 years after plant startup (the Regional Well Monitoring Period). At the end of this Regional Well Monitoring Period, the easement for the Regional Monitoring Well, the Regional Monitoring Well and any appurtenances thereto will be transferred to the District. Any transfer of property rights or interests by the County shall be subject to King County Council approval. All monitoring information will be made available to the District in a timely manner as agreed to by the Parties.

If at any time in the future the monitoring identifies adverse impacts to the aquifer which are directly attributable to the Brightwater Project, then King County agrees to take appropriate actions to eliminate the impact, mitigate the effects of the impact or compensate the District for the effects of the impact to the aquifer.

Woodlane Well Monitoring

A monitoring well located on District property at the Woodlane Well will be installed by King County (the Woodlane Monitoring Well). This well will be drilled with an 8-inch diameter casing using cable-tool methods to assure that water level relationships are properly documented during the drilling process. The Woodlane Monitoring Well will be drilled and completed at the same or similar depths as the Woodlane Well. The Woodlane Monitoring Well will be equipped with a

water level data logger and transducer. The County will provide a monitoring well construction plan including the proposed location, design and instrumentation. The plan will also include a definition of water level changes that would trigger additional hydrogeologic evaluation. The Parties will agree on the scope of any additional evaluation on a case-by-case basis. The monitoring well construction plan will be presented to the District for review and concurrence prior to installation of the Woodlane Monitoring Well. This plan will be presented to the District for review and concurrence prior to installation of the monitor well.

Subject to the scope of services and rate and reimbursement schedule in attachment 3, the County will compensate the District for the expense of the collection and interpretation of the monitoring data described in the following paragraph including reasonable consultant costs for the added monitoring required for the District to protect itself against impairment of this source by the Project.

County will, at its sole expense, install and provide instruments for the Woodlane Monitoring Well. Upon completion of the installation of the Woodlane Monitoring Well, and at least six months prior to the commencement of the tunneling and associated construction dewatering activities on the Brightwater treatment plant site, ownership of the Woodlane Monitoring Well and appurtenances will be transferred to the District. The District will be responsible for performing quarterly water level monitoring. The County will reimburse the District for the cost of collecting and analyzing the water level data, at a frequency of once per week for the first three months of dewatering, monthly for the following nine months and quarterly thereafter for a term ending 5 years after plant startup. The data generated from this monitoring will be made available to the County in a timely manner as agreed to by the Parties.

If at any time in the future the monitoring performed by the District identifies adverse impacts to the Woodlane Well directly attributable to the Brightwater Project, then King County agrees to take appropriate actions to eliminate the impact, mitigate the effects of the impact or compensate the District for the effects of the impact.

Exhibit 2 – Definitions

Definitions:

- A. Project shall mean Design, Construction, Commissioning and Operation of the Brightwater Wastewater Conveyance and Treatment System at the Route 9 site.
- B. Water Quality Criteria shall be based on Washington State Dept. of Health criteria as it may be amended from time to time.
- C. Design Criteria shall mean sound and accepted construction standards for municipally owned and operated treatment plant facilities and related conveyance structures.
- D. Aquifer: shall mean the Cross Valley Sole Source Aquifer as defined by existing documentation or as appropriately refined in response to new subsurface information that may become available within the term of this agreement. This aquifer is acknowledged as the District's source aquifer.
- E. EPA shall mean Environmental Protection Agency.
- F. "Make the District Whole" is defined as the County ensuring there is no financial burden incurred or borne by the District due to reduced water quality or capacity from the District's source aquifer caused by the installation or operation of the Project. The County's obligation "to make the District whole" shall include, but not be limited to, reimbursement of costs incurred or borne by the District as a result of such a water quality or capacity reduction or impact to the water resources, infrastructure or operations of the District. As set forth in Section 12 of Attachment 1 herein the County agrees to reimburse the District for the cost of collecting and analyzing water level data, as specified in Section 12 of Attachment 1 for 5 years after plant commissioning. If monitoring performed by the District after that 5 year period demonstrates that the Brightwater Project caused adverse water quality or water capacity impacts to the District's source aquifer, then the County will reimburse the District for the cost of the specific monitoring which demonstrates the adverse impact. However nothing in this agreement shall obligate the County to reimburse the District for the District's monitoring costs, if any, after that 5 year period which do not demonstrate that the Brightwater Project caused adverse water quality or water capacity impacts to the District's source aquifer.

Exhibit 3 – District Work and Services

District Work and Services

Work Task	Dates Start (End)					Estimated Total Cost
Set up for and collect Woodlane Well Data Review of Regional and Woodlane Well Data	As soon as practicable prior to tunneling activities until five (5) years after plant commissioning	Professional Services or District work				\$175,000 maximum
Review site and site tunneling de-watering data, track project progress, inspect project execution	12/2005 to 12/31/2010 or to plant commissioning whichever occurs later.	Professional Services or District work				\$100,000 maximum
Total						\$275,000 maximum not to exceed

Exhibit 4 – Statutory Warranty Deed

After Recording Return To:

King County
Department of Natural Resources and Parks
Wastewater Treatment Division
201 South Jackson Street, Ste. 0503
Seattle, WA 98104
Attn: ROW/Permitting Supervisor

**STATUTORY WARRANTY DEED
(SEWER SYSTEM EASEMENT IMPROVEMENTS) AND
ASSIGNMENT OF SEWER EASEMENTS**

GRANTOR: CROSS VALLEY WATER DISTRICT

GRANTEE: KING COUNTY, a political subdivision of the State of Washington

Legal Description:

Abbreviated Form:

Additional legal on Exhibits _____ through _____ of document

Assessor's Tax Parcel Number(s): _____

Reference No(s). of Related Document(s): [Insert recording numbers for various sewer easements]

**STATUTORY WARRANTY DEED (SEWER SYSTEM EASEMENT IMPROVEMENTS) AND
ASSIGNMENT OF SEWER EASEMENTS**

**STATUTORY WARRANTY DEED (SEWER SYSTEM EASEMENT IMPROVEMENTS) AND
ASSIGNMENT OF SEWER EASEMENTS** dated as of _____, 2005 is by and between **CROSS
VALLEY WATER DISTRICT a/k/a CROSS VALLEY WATER ASSOCIATION, INC.**, a Washington
municipal corporation ("Cross Valley") and **KING COUNTY**, a political subdivision of the State of
Washington ("King County") is entered into with reference to the following facts:

RECITALS

- A. Cross Valley is a municipal corporation of the State of Washington and pursuant to RCW 57.08 now owns, operates, maintains a system of sanitary sewage collection, treatment and disposal.
- B. King County is authorized by RCW 35.58 to own and operate regional sanitary sewage and treatment facilities.
- C. Cross Valley and King County have entered into that certain

Agreement dated _____, 2005 (the "Agreement") pursuant to which Cross Valley has agreed to convey certain sanitary sewer facilities and improvements more particularly described in Schedule 1 attached hereto and by this reference incorporated herein and currently located within easements previously acquired by Cross Valley together with all of its right title and interest under such easements which affect certain real property located in Snohomish County, Washington and more particularly described in Schedule 2 to King County .

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

AGREEMENT

1. Cross Valley conveys and warrants to King County all pipelines, connections, catch basins, drains, ducts, vaults, manholes, vents, meters, conduits, wires, pump stations, force mains, valves and other necessary and convenient equipment and appurtenances including but not limited to the pipeline more particularly described on Schedule 1 (collectively the "Easement Improvements") now located within the easement areas more particularly described in the various easements described on Schedule 2 attached hereto and by this reference incorporated herein (collectively, the "Easement Areas").

2. Cross Valley further conveys, warrants, assigns and transfers to King County all of its right, title and interest under the easements more particularly described on Schedule 2 attached hereto and by this reference incorporated herein (collectively, the "Easements"). Cross Valley represents and warrants that there is no default, and no event that with the giving of notice, the passage of time, or both, would constitute an event of default by Cross Valley under any of the Easements.

3. King County, by execution hereof, agrees to assume and perform each and every covenant, obligation and agreement of Cross Valley under the Easements relating to the Easement Improvement arising or accruing from and after the date hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Deed and Assignment as of the date and year first above written.

"Cross Valley"

CROSS VALLEY WATER DISTRICT, a/k/a
CROSS VALLEY WATER ASSOCIATION, INC.,
a Washington municipal corporation

By _____
Name _____
Title _____

Approved as to Form

"King County"

KING COUNTY, a political subdivision of the State
of Washington

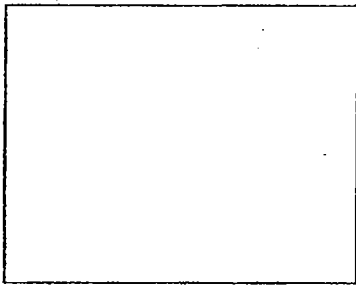
King County Prosecuting Attorney

By _____
Name _____
Title _____

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 _____ signed this instrument, on oath stated that _____ is authorized to execute the instrument and acknowledged it as the _____ of the Department of Natural Resources and Parks of King County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____.



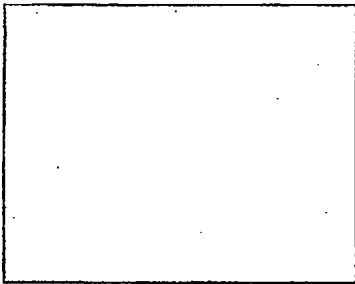
(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission 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 _____ signed this instrument, on oath stated that _____ is authorized to execute the instrument and acknowledged it as the _____ of the Department of Natural Resources and Parks of King County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____.



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

Exhibit S

Grantor	Recording No.	Property	Purpose	Area Affected	Tax Parcel Number(s)	Site Map No.	Status of easement	Notes
Cross Valley Water Association, Inc.	8308080124	Fitz Auto Parts Inc.	Water line or lines	A 10-foot-wide strip	27053500201400, 27053500201200, 27053500201900	41	Keep easement	
Cross Valley Water Association, Inc.	8308080122	Waterman	Water lines	10 foot wide strip within Parcel B	27053500200800, 27053500200900, 27053500201000		Keep easement	
Cross Valley Water Association, Inc.	8404090140	VRJ LLC	Water line	Westerly 20 feet of Parcel A	27052600300400	1	Keep or modify easement	Water line to be modified during North Mitigation Area construction.
Cross Valley Water Association, Inc.	8404090141	VRJ LLC	Water line	Westerly 10 feet of Parcel B	27052600300500	2	Keep or modify easement	Water line to be modified during North Mitigation Area construction.
Cross Valley Water Association, Inc.	24069935	Crane	Water lines	Parcel B	27053500202400	30	Abandon/Modify easement	
Cross Valley Water Association, Inc.	8308080123	Crane	Water lines	Westerly 10 feet adjacent to Highway 9.	27053500202400	31	Keep easement	
Cross Valley Water Association, Inc.	8808160283	Crane	Water lines	East 250 feet of the property.	27053500202400	32	Modify easement	Modify an easement along Hwy 9 for water lines
Cross Valley Water Association, Inc.	8308080112	Fitzpatrick, D.L. & C.L. Waterman	Water line	Westerly 10 feet of property lying easterly and adjacent to the SR-9 Right of Way.	Title co. determined easement to be within the SR-9 Right of Way.		Keep easement	Easement determined to be in WSDOT ROW by title company.
Cross Valley Water Association, Inc.	8308080119	Fitzpatrick, D.L. & C.L.	Water line	Westerly 10 feet of said premises	Title company determined easement to be within the SR-9 Right of Way.		Keep easement	Easement determined to be in WSDOT ROW by title company.
Cross Valley Water Association, Inc.	8308080120	Fitzpatrick, D.L. & C.L. Waterman	Water line or lines	Westerly 10 feet of the above described property lying easterly of and adjacent to the easterly margin of State Hwy SR-9	Title company determined easement to be within the SR-9 Right of Way. 27053500200500		Keep easement	Easement determined to be in WSDOT ROW by title company.
Cross Valley Water Association, Inc.	8308080121	Fitzpatrick/Fitzpatrick	Water line or lines	Westerly 10 feet	27053500201100, 27053500102700	42	Keep easement	
Cross Valley Water Association, Inc.	8308080116	House Utility Essentials	Water line	The westerly 10 feet	27053500200700	27	Keep easement	

Grantor	Recording No.	Property	Purpose	Area Affected	Tax Parcel Number(s)	Site Map No.	Status of assessment	Notes
Cross Valley Water Association, Inc.	2406995	Kennedy Evergreen	Water line or lines and appurtenances thereto	A strip of land 30 feet by 584 feet	27053500201300, 27053500201600	28	Modify easement for water, abandon for sewer	
Cross Valley Water Association, Inc.	303080114	Fitz Auto Parts Inc.	Water line or lines	Westerly 10 feet	Title company determined easement to be within the SR-9 Right of Way.		Keep easement	Easement determined to be in WSDOT ROW by title company.
Cross Valley Water Association, Inc.	3203080117	Fitz Auto Parts Inc.	Water line or lines	Westerly 10 feet	Title company determined easement to be within the SR-9 Right of Way.		Keep easement	Easement determined to be in WSDOT ROW by title company.
Cross Valley Water Association, Inc.	3203080118	Fitz Auto Parts Inc.	Water line or lines	A 10-foot strip of a portion	27053500201400, 27053500201200, 27053500201900		Keep easement	
Cross Valley Water Association, Inc.	32408080185	Fitz Auto Parts Inc.	Water line	10 feet of the property	27053500201400, 27053500201200, 27053500201900		Keep easement	Easement in WSDOT ROW
Cross Valley Water Association, Inc.	9606090121	Fitz Auto Parts Inc.	Water and sewer lines	Permanent: 16-foot-wide strip Temporary: 26-foot-wide strip of land lying 13 feet each side	27053500201400, 27053500201200, 27053500201900	38	Modify easement for water, abandon for sewer	
Cross Valley Water Association, Inc.	8208080113	Rennschon	Water line	The westerly 10 feet	27053500200600	33	Keep easement	
Cross Valley Water Association, Inc.	9606090120	Fitz Auto Parts Inc.	Water and sewer lines	Unable to determine exact location	27053500201400, 27053500201200, 27053500201900	40	Modify easement for water, abandon for sewer	
Cross Valley Water District	9611060280	Northshore School District	Water lines	10 foot strip covering Easement Line A, and 10 foot strip covering Easement Centerline B.	27052600300300	3	Abandon/Modify easement	Water line to be modified during North Migration Area construction.
Cross Valley Water District	9611060281	Northshore School District	Sewer lines	10 foot strip.	27052600300300	4	Abandon easement	
Cross Valley Water District	9606090122	Fitzpatrick/Fitzpatrick Fitz Auto Parts Inc.	Water and sewer lines	Westerly 16 feet	2705350020110, 27053500201700; For Fitz Auto: 27053500201400, 27053500201200, 27053500201900	39	Modify easement for water, abandon for sewer	

Grantee	Recording No.	Property	Purpose	Area Affected	Tax Parcel Number(s)	Size Map No.	Status of easement	Notes
Cross Valley Water District	9509190111	Fitzpatrick/Fitzpatrick	Water and sewer lines	Most westerly 16 feet of the most northerly 15 feet of the property	2703350020110, 2703340012700	45	Modify easement for water, abandon for sewer	
Cross Valley Water District	9511200342	Fitzpatrick/Fitzpatrick	Water line	A 10-foot-wide strip	27032600301100, 2703340012700	43	Keep easement	
Cross Valley Water District	9508140429	Bear Creek Grange, Woodlville Business Park	Water and sewer lines	A 16-foot-wide strip; For Woodlville Business Park; Along proposed SR 9 ROW; affect 262703-010	27032600301100, 27032600301000, 27032600303100, 27032600303400	18	Modify easement for water, abandon for sewer	
Cross Valley Water District	9508140430	Bear Creek Grange	Water and sewer lines	A 16-foot-wide strip	27032600301100, 27032600301000	17	Modify easement for water, abandon for sewer	
Cross Valley Water District	9704130031	House Utility Easements	Water and sewer lines	A 16-foot-wide strip	27033500200700	23	Modify easement for water, abandon for sewer	
Cross Valley Water District	9710200336	House Utility Easements	Water and sewer lines	A 2-foot-wide strip	27033500200700	22	Modify easement for water, abandon for sewer	
Cross Valley Water District	9604170283	Kennedy Evergreen	Sewer lines and appurtenances thereto	Permanent: Northern 5 feet of the westerly 240 feet Temporary: Northern 10 feet of the westerly 240 feet	27033500203500, 27033500203600	26	Abandon easement	

Grantee	Recording No.	Property	Purpose	Area Affected	Tax Parcel Number(s)	Site Map No.	Status of assessment	Notes
Cross Valley Water District	9604170384	Kennedy Evergreen English	Sewer lines and appurtenances thereto	Permanent: the southerly 5 feet of the westerly 240 feet Temporary: the southerly 10 feet of the westerly 240 feet; For English: South 5 feet of Westerly	27053500201300, For English: 27053500201400	25	Abandon assessment	
Cross Valley Water District	9611060279	Rainboom	Water and sewer lines	A 15 foot strip.	27053500200600	24	Modify assessment for water, abandon for sewer	
Cross Valley Water District	9607010162	Waterman	Water and sewer lines	A strip of land in the westerly portion of parcel A that varies in width from 31.64 feet to 38.68 feet in an east-west direction and is 60 feet long in a north-south direction.	27053500200300	34	Modify assessment for water, abandon for sewer	
Cross Valley Water District	9607010159	Waterman	Water and sewer lines	Portion of Parcel B	27053500200800, 27053500200900, 27053500201000	37	Modify assessment for water, abandon for sewer	
Cross Valley Water District	9607010160	Waterman	Water and sewer lines	Portion of Parcel B	27053500200800, 27053500200900, 27053500201000	36	Modify assessment for water, abandon for sewer	
Cross Valley Water District	9607010161	Waterman	Water and sewer lines	Portion of Parcel B	27053500200800, 27053500200900, 27053500201000	35	Modify assessment for water, abandon for sewer	
Cross Valley Water District	9606030127	VRA LLC	Sewer lines	The east ten feet of Parcel C except the north 370 feet thereof	27052600301400,	5	Abandon assessment for sewer	
Cross Valley Water District	9509190114	Woodruffville Business Park	Water and Sewer Lines	16' wide easement along proposed SR 9 ROW (depletion)	27052600303500, 27052600303300, 27052600303400	7	Modify assessment for water, abandon for sewer	

Grantee	Recording No.	Property	Purpose	Area Affected	Tax Parcel Number(s)	Site Map No.	Status of easement	Notes
Cross Valley Water District	9509190115	Woodinville Business Park	Water and Sewer Lines	16' wide easement along proposed SR 9 ROW (depiction)	27052600303500, 2627053008000, 27052600303300, 27052600303400		Modify easement for water, abandon for sewer	
Cross Valley Water District	9509190116	Woodinville Business Park	Water and Sewer Lines	16' wide easement along proposed SR 9 ROW (depiction)	27052600303500, 2627053008000, 27052600303300, 27052600303400		Modify easement for water, abandon for sewer	
Cross Valley Water District	9511200344	Woodinville Business Park	Water and Sewer Lines	16' wide easement along proposed SR 9 ROW (depiction)	2627053008000	20	Modify easement for water, abandon for sewer	
Cross Valley Water District	199908160706	Woodinville Business Park	Water Lines	Depiction illustrates extensive easement area	2627053008000, 27052600300800	9	Modify Easement	
Cross Valley Water District	199908160707	Woodinville Business Park	Sanitary Sewer Lines	Depiction illustrates extensive easement area, however it may only affect a portion of Tract 100	2627053008000, 27052600300800	13	Abandon easement	
Cross Valley Water District	199908250169	Woodinville Business Park	Water Lines	An easterly portion of lots 3 and 4 and a portion of tract 100 (?)	27052600300800, 2627053008000, 27052600303300, 27052600303400	19	Keep easement	
Cross Valley Water District	200205080594	Woodinville Business Park	Water Lines	Depiction illustrates easement E along the westerly portion (SR9) of property (and through the middle of the two lots)	27052600303300, 27052600303400	14	Modify easement so that it is not through the middle of the two lots	
Cross Valley Water District	200205160125	Woodinville Business Park	Water Lines	Depiction illustrates easement E along the westerly portion (SR9) of property (and through the middle of the two lots)	27052600303300, 27052600303400	15	Modify easement so that it is not through the middle of the two lots	
Cross Valley Water District	9409190112	Woodinville Business Park	Sewer Lines	Acres northwesterly portion of lot 5 and lot 1 between SR 9 and BNR	27052600303500, 27052600300800	11	Abandon easement for sewer lines	

