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2004-310

ATTACHMENT A

**MEMORANDUM OF AGREEMENT
BETWEEN KING COUNTY AND THE CITY OF BOTHELL
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, including a portal in the City of Bothell at the North Creek Business Park (Portal 41) and a portal (Portal 44) in the City of Kenmore near the Bothell city limits; and

WHEREAS the City of Bothell appealed King County's FEIS regarding the Brightwater Project; and

WHEREAS, the City of Bothell and King County desire to address the specific concerns and issues raised during the City's appeal and likely to arise during the pre-design and permit application process, by entering into an agreement on principles to guide the parties in addressing these issues and concerns at that more detailed stage of the Brightwater Project; and

WHEREAS, the City of Bothell Water Utility owns the Penn Park site located at 19900 100th Ave NE. The site serves as a key element of the City's water system and includes a .5 MG Water Reservoir and two groundwater wells (ground water certificates 129D, 152 and 4074); 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 Bothell with additional information in each area and identifies the overall goals of King County and the City of Bothell in each area.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. The City of Bothell agrees to withdraw its appeal of the Brightwater FEIS.

2. Guidelines for Addressing Traffic Impacts

King County understands that several traffic improvement projects are currently planned to be constructed within the City of Bothell and, as planned, they may be under construction concurrently with the construction activities of the Brightwater Project at Portal 41 (within North Creek Business Park) and Portal 44 (within the City of Kenmore). Two major projects of particular interest to the City of Bothell are the Wayne Curve Project on Bothell Way, to be constructed in 2006-2008 and the University of Washington South Access Project that will be an interchange project with I-405 and is proposed to be under construction in 2005.

To address this, King County commits to working with the City of Bothell as part of the ongoing pre-design and permit application process and to agree jointly on the traffic modeling techniques and process by which to assess any significant traffic impacts to the City of Bothell caused by Brightwater construction and/or operational activities and those of significance caused by concurrent traffic improvement projects affecting the City of Bothell. Information contained in the Brightwater FEIS will be supplemented as additional analysis is completed.

Traffic mitigation will be determined and commitments confirmed during the permitting and approval process with the City of Bothell prior to any construction activities within the City of Bothell related to the Brightwater project. Mitigation will address the significant Brightwater traffic impacts, including the taking into account of concurrent projects of significance. King County will not be responsible for mitigating traffic impacts caused by other projects.

King County agrees to work with the City to assess significant traffic impacts resulting from the Brightwater project construction and operations and to address Brightwater's impacts with appropriate mitigation, taking into account concurrent projects within or affecting the permitting jurisdiction's traffic flow.

3. Guidelines for Addressing Construction Impacts at Portal 41 within the City of Bothell

King County will work with the City of Bothell to address the potential construction impacts of traffic, noise, dust, vibration and wetland protection associated with Brightwater activities at Portal 41 in the North Creek Business Park within the City of Bothell. As the City of Bothell is the permitting jurisdiction for the North Creek Business Park Portal site, noise, dust, vibration and wetland protection and other related construction or operational issues will be addressed with the City of Bothell during its permitting process.

Understanding that noise related to construction and/or operation at Portal 41 of the proposed Brightwater facilities is of paramount concern to the City of Bothell, King

County will hire an acoustic design expert to assess probable significant adverse impacts and develop design alternatives to address these probable impacts.

4. Guidelines for Addressing Construction Impacts at Portal 44 within the City of Kenmore

King County will work with the City of Bothell to address the potential construction impacts of traffic, noise, dust, vibration and wetlands protection associated with Brightwater activities at Portal 44 that lies just west of the City limits of Bothell. Bothell acknowledges that it could potentially be affected by construction activities and needs to assure its citizens that there will not be unmitigated significant adverse impacts resulting from Brightwater construction activities.

King County commits to consulting with and allowing the City of Bothell review of the proposed permitting submittals to the City of Kenmore regarding Portal 44. Probable significant adverse impacts to the City of Bothell will be identified and appropriate mitigation will be developed for the construction activities at Portal 44.

Understanding that noise related to construction and/or operation at Portal 44 of the proposed Brightwater facilities is of paramount concern to the City of Bothell, King County will hire an acoustic design expert to assess probable significant adverse impacts and develop design alternatives to address these probable impacts.

King County commits to consulting with and involving, as appropriate, the City of Bothell staff in the planning and implementation of public involvement activities that will occur related to the proposed Brightwater construction activities at Portal 44. At least one such public involvement meeting will occur within the City of Bothell.

5. Portal Size Requirements

The Portal sites along the Brightwater conveyance route require approximately 1-2 acres for use. Larger sites are being acquired in many cases due to existing property boundaries. The additional area above 1-2 acres will allow flexibility in construction and provide additional area to buffer project activities from the neighboring land uses. At Portal 41, the North Creek Portal, the entire site will remain in King County ownership because it will be required for permanent facilities. At Portal 44, the North Kenmore Portal, King County will work with the City of Kenmore and seek input from Kenmore and Bothell residents in the surrounding area to determine the future long term permanent use of the area that is not required for permanent facilities. This may include the use of this area for parkland, natural habitat protection area or other similar uses.

6. Guidelines for Addressing Protection of the Aquifer underlying the City of Bothell

King County will work with the City of Bothell to address concerns related to the protection of the aquifer underlying the City of Bothell during the construction of the

Brightwater system, which includes conveyance pipelines. The area of particular interest is an area along 195th Street at William Penn Park.

The City of Bothell anticipates reactivating its water well field at William Penn Park (see Figure 1-4, attached). If the various legal, institutional and financial elements of their current study are favorable, the City will begin testing the well field for water quantity and quality. King County will:

- A) Meet with City's selected consultant to provide and describe geotechnical data (geology, soil properties, and groundwater) obtained along the Conveyance Alignment.
- B) Provide continuous logs of water levels for all monitoring wells and piezometers currently installed in King County borings for the Brightwater conveyance across the source aquifer in the proximity of the well field during the City's aquifer pump testing.

In the event that the City decides to proceed with the reactivation of its well field, the County agrees to develop and implement its Brightwater groundwater level and water quality-monitoring program in the vicinity of the City's source aquifer. The County and the City agree to advance planning to make the best use of both the County's and the City's resources in the anticipated monitoring program. As part of that effort, King County will provide groundwater and water quality monitoring to determine any probable significant impacts to the City's source aquifer. To determine the aquifer characteristics and water quality, King County agrees to reimburse the City within 60 days after presentation of a proper invoice in an amount not to exceed \$40,000 for the City's test well project at the Penn Park site. A detailed scope of work will be developed between the City and King County prior to the beginning of any work on the project. Coordination methods will be set up to ensure adequate communication between the agencies such that information from the monitoring well will support both agencies projects.

The work elements for the City of Bothell coordinated test well effort will include the following:

- A) Review and consultation related to Brightwater data, test well planning, and permitting (City, City consultant, and County Geotech Consultant).
- B) Install test well and perform pumping (City drilling contractor).
- C) Install two or three monitoring wells in the aquifer to observe water levels during the pump test (City drilling contractor). The parties may agree to substitute one with a new Brightwater alignment monitoring well.
- D) Monitoring water levels in the test well, monitoring wells, and all existing nearby Brightwater alignment monitoring points. Review data (City consultant and County Geotech Consultant).
- E) Test well data evaluation and report (City consultant).

In any event, the County will work with the City to coordinate hydrogeological monitoring and testing of aquifers along the Conveyance Alignment through the City during the construction of the Brightwater system. The County will work with the City to select and develop locations for additional monitoring wells to confirm conditions pre-construction, during construction and following construction. This monitoring program will include:

- A) Groundwater level monitoring at points along the Conveyance Alignment through the City and
- B) Groundwater level and water quality monitoring in at least one monitoring well located between the Tunnel and the source aquifer.

Groundwater level monitoring will be performed using submersible transducers in monitoring wells or vibrating wire piezometers installed in borings connected to a portable data logger. The portable data logger shall be capable of recording hourly hydraulic head readings. Each transducer shall have a minimum accuracy of 0.10% of scale. Water quality monitoring shall be performed quarterly and include indicator parameters for organic and inorganic compounds as mutually agreed with District.

In addition, the following documents are to be provided to the City by the County:

- 1. FEIS Appendix 6-B, Geology and Groundwater (already provided)
- 2. Predesign Geotechnical Data Report (Logs of Borings, Groundwater Level Measurements, Laboratory Test Results) (Published 02/07/2004)
- 3. Predesign Geotechnical Interpretive Report (Geologic Description, Geologic/Geotechnical Profiles, Other Interpretive Data) (Published ~ 03/2004)

7. Guidelines for Continued Public Involvement

Starting in January 2004, King County held a series of meetings for the immediate neighbors of the five proposed conveyance construction portals, including meetings for the North Creek portal and meetings for portals in Kenmore.

King County is planning additional activities to involve and gain input from the residents of the City of Bothell regarding the design, construction, and operation of the Brightwater system within and adjacent to the City of Bothell. A series of larger meetings across the conveyance route occurred in March and April to explain the details of tunneling, easement acquisition, and conveyance construction and to give people an opportunity to comment on Brightwater project mitigation. King County will follow-up with surrounding portal neighbors later in the design phase to share details of the construction activities and permanent facilities planned for each portal.

King County will continue to contact and meet with individual businesses and civic, neighborhood and business groups that are interested in or may be affected by our

project. For the North Creek portal (Portal 41), this will include the YMCA, Wyndham Garden Hotel, and other surrounding neighbors. For the North Kenmore portal (Portal 44), this will include residential property owners within both the Cities of Bothell and Kenmore. Additional outreach activities may include but shall not be limited to updates to the Brightwater project Web site, publication of the project newsletter, and mailings to announce public events and provide additional information.

King County commits to working with the City of Bothell to address the public involvement needs of its citizens.

8. Odor Control

Odor control is of paramount concern to King County and the City. 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, which includes Portals 41 and 44. This standard will be met at the site property lines, 24 hours a day, 365 days a year.

King County reaffirms its commitment to building the Brightwater Treatment Plant and conveyance system to meet the above-stated odor standards subject to King County appropriation. Within the next 60 days, the King County Executive shall transmit this Memorandum of Agreement (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.

9. Guidelines for Staff Review Funding

King County commits to reimburse the City of Bothell for its staff or consultant time (in lieu of staff time) that it has been required to expend to date to provide appropriate review of Brightwater project research and documentation in total, up to \$25,000. Further Brightwater related project review for non-permit related staff time will be reimbursed according to a mutually agreed to scope of work with associated hourly rates. Staff time required for permit review will be funded by permit review fees paid to the City of Bothell. Legal fees incurred by the City of Bothell will not be reimbursable by King County.

10. Guidelines for Addressing Emergency Management Planning and Emergency Response

King County recognizes the importance of emergency management planning and response and pledges to work with the City of Bothell and the Bothell Fire District (taking into account any current inter-local agreements) regarding emergency management planning, emergency response and related facility design and construction

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 and construction 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 Bothell, to address adequate response times, availability of required equipment, personnel and training of emergency response staff. King County will 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. If any deficiencies are determined King County will provide necessary and appropriate funding to address the deficiencies.

11. Continuing Review and Input Processes

In addition to the approaches presented above to address the concerns of the City of Bothell and its citizens, King County will work with the City of Bothell and all other permitting jurisdictions during the design and permitting process to address the probable significant construction and operational impacts related to the facilities of the Brightwater System and determine the appropriate mitigation. The permitting process will include multi-step review by the jurisdiction and all jurisdictional required public involvement within each jurisdiction will be completed before permits are issued and any construction can begin in that jurisdiction.

12. Community Mitigation

As per King County Ordinance 13680, Environmental Mitigation Policies, the county's goal will be to construct regional wastewater facilities that enhance the quality of life in the region and in the local community, and are not detrimental to the quality of life in their vicinity. The County is committed to working with the communities impacted by the Brightwater project to mitigate for overall community impacts. The construction and operational impacts will be addressed and appropriate mitigations will be determined through the normal permit review and additional studies and monitoring as outlined in this agreement and successor agreements.

13. 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. 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.

14. Regulatory Authority Preserved

Nothing herein shall be construed as a waiver, abridgment or other limitation of the City of Bothell'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.

15. 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.

16. Termination

Unless terminated earlier through the mutual, written consent of the parties, this Memorandum of Agreement shall terminate upon completion of the tasks described herein. Notwithstanding the termination of this MOA, the provisions of paragraph 15 (mutual indemnification) shall survive such termination.

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17. 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.

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

KING COUNTY

By: _____
Title: _____

Dated: _____

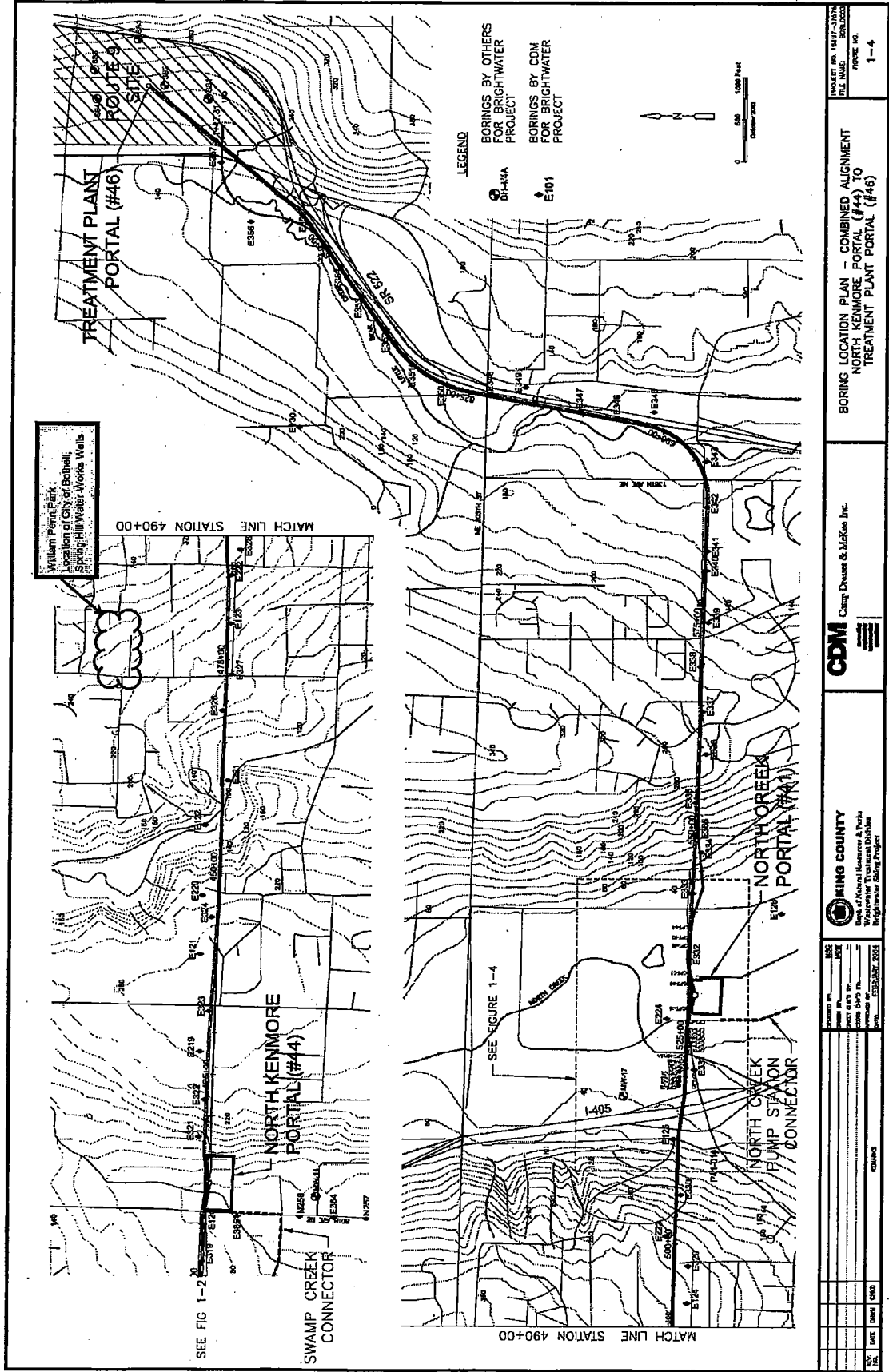
CITY OF BOTHELL

By: _____
Title: _____

Dated: _____

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Figure 1-4



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