

AGREEMENT FOR SALE AND USE OF THERMAL ENERGY FROM KING COUNTY WASTEWATER

This Agreement (“Agreement”) is made as of the _____ day of _____, 202_ between Longacres Owners Association, a Washington nonprofit corporation, hereinafter referred to as “Wastewater Thermal Energy User,” and King County, a Home-Rule charter county and political subdivision of the State of Washington hereinafter referred to as the “County.” Wastewater Thermal Energy User and the County may be collectively referred to as the “Parties” and individually as a “Party.”

RECITALS:

WHEREAS, the County is the successor to Metro, a regional wastewater services provider whose regional wastewater service area includes King County and parts of Snohomish and Pierce counties; and

WHEREAS, the County owns and operates 390-plus miles of pipelines, trunks and interceptors that convey wastewater throughout the County’s regional wastewater service area; and

WHEREAS, wastewater contains thermal, or heat, energy. Various technologies have been, and are being, developed that allow for the potential transfer of heat energy to or from wastewater pipelines to provide heating and cooling to individual buildings, neighborhoods, and/or communities; and

WHEREAS, the transfer of heat energy to or from wastewater reduces energy dependence on fossil fuels and is consistent with the County’s mission of recovering resources from wastewater; and

WHEREAS, pursuant to RCW 35.58 the County may contract with private and public parties, and set the rates and charges, for the use of the County’s regional wastewater facilities; and

WHEREAS, Wastewater Thermal Energy User plans to utilize an existing sewer heat recovery installation known as the “Effluent Cooling System” or “ECS Model Project” or the “Project.” The ECS Model Project serves the property located at 1301 SW 16th Street, Renton, WA, which is part of a larger approximately 154-acre collection of parcels recently acquired by Wastewater Thermal Energy User collectively known as the “Longacres Property”; and

WHEREAS, until 2021 the Longacres Property was owned by the Boeing Company, a Delaware corporation (“Boeing”). In 1992 Boeing and Metro entered into a twenty-five year agreement for construction and operation of the ECS Model Project (the “1992 Agreement”). The 1992 Agreement expired by its terms in 2017; and

WHEREAS, pursuant to the 1992 Agreement, the components of the Effluent Cooling System consists of the following personal property (the "ECS Components"):

- (a) Pumps and associated equipment.
- (b) Flow straining equipment.
- (c) Flow metering system.
- (d) Feed force main to property at 1301 SW 16th Street, Renton, WA, including section crossing under Interstate 405.
- (e) Return force main to the treatment plant including section crossing under Interstate 405.
- (f) Return structure at STA 4+79.55 (outside of fenced County Property).
- (g) Telemetry system to property at 1301 SW 16th Street, Renton, WA.
- (h) Monitoring system to County control building.
- (i) Separate metered electric power feed to the chiller effluent pumping station.
- (j) Reinforced concrete slab to support pumps, including foundation or piling structure (the "Support Slab").
- (k) Screens or panels to provide weather protection for operations staff; and
- (i) Lightweight roof canopy.

Some portions of the ECS Components, i.e. portions of pipelines, the telemetry system and related items, are located on the Longacres Property. The remaining components are located either on the County's South Treatment Plant property ("County Property") or under Interstate 405. Other than item (j) above, title to all ECS Components passed to Boeing during the term of the 1992 Agreement, although the transfer of title to the ECS Components may not have been formally memorialized: and

WHEREAS the Flow Metering System listed as item (c) above is obsolete and needs to be upgraded to provide current flow and temperature data to the County. The Monitoring System to County Control Building listed as item (h) above is no longer operable and may or may not need to be replaced. The County is willing to update the Flow Metering System and, if necessary, the Monitoring System to the County Control Building at County's cost provided that the County is able to own and operate these two components. Therefore, the Parties agree that item (c) and item (h) of the ECS Components shall transfer to the County as part of this Agreement; and

WHEREAS the reinforced concrete slab listed as item (j) above is actually a 4-inch-thick concrete slab which supports some of the ECS Components located on County Property that were transferred to Boeing. The Parties desire that this "Support Slab" be transferred to Wastewater Thermal Energy User as part of this Agreement; and

WHEREAS, prior to the date hereof, Wastewater Thermal Energy User acquired portions of the Longacres Property, which acquisition included the Effluent Cooling System and title to some or all of the ECS Components, provided that Wastewater Thermal Energy User intends to further document the transfer of all of the ECS Components, except for the Flow Metering System listed as item (c) above and the Monitoring System to County Control Building listed as item (h) above; and

WHEREAS, Wastewater Thermal Energy User proposes to utilize the existing ECS Model Project for the purpose of transferring heat energy to the County's wastewater from a multi-use and multi-owner complex of buildings currently constructed and to be constructed on the site commonly known as Longacres in Renton, WA; and

NOW THEREFORE, the Parties agree as follows:

1. Definitions

1.1. Affected Party means a party to this Agreement that seeks relief from the performance of its respective obligations under this Agreement due to an Event of Force Majeure.

1.2. Authorized User means an Initial Authorized User or Subsequent Authorized User approved by the County to commence transfer of heat energy to or from the (South Plant effluent line) pursuant to the terms and conditions set forth in this Agreement.

1.3. Commercial Operation Date means the date on which the Connection, as defined in Section 1.4, is completed and ready to commence transfer of heat energy to or from the (South Plant effluent line) pursuant to the terms and conditions set forth in this Agreement.

1.4. Connection means the County-authorized and approved location described in Section 4.1 where an Authorized User may connect to a County wastewater facility.

1.5. County Retained ECS Components means the following ECS Components: the Flow Metering System, and the Monitoring System to County Control Building.

1.6. Energy Transfer Station means the structures and equipment that are used to transfer heat energy to or from King County's sewage to the Wastewater Thermal Energy User. The Energy Transfer Station is operated by the Wastewater Thermal Energy User and is typically located on the Wastewater Thermal Energy User's property.

1.7. Event of Force Majeure means any event or circumstance (or combination thereof) and the continuing effects of any such event or circumstance which is (a) not attributable to the act, neglect, omission, breach of contract or of statutory duty, gross negligence or willful misconduct of the Affected Party, its representatives or its contractors and (b) which could not have been prevented, overcome or remedied by the Affected Party through its exercise of reasonable diligence under the circumstances. Events of Force Majeure include the following events and circumstances to the extent that they, or their effects and consequences, satisfy the requirements set forth in clauses (a) and (b) of the immediately preceding sentence:

1.7.1. act of God, landslides, fire, lightning, flood, storm, tornado, earthquakes or extreme adverse weather or environmental conditions (but excluding adverse weather conditions which are within the range of conditions historically experienced at the site of the Connection or proposed Connection);

1.7.2. act of public enemy, armed conflicts or act of foreign enemy (including acts of terrorism (whether state-sponsored or otherwise), blockades, embargoes, insurrections, riots, sabotage or epidemics, civil disturbances, explosions and wars (whether declared or undeclared));

1.7.3. Changes in law;

1.7.4. breakdowns or interruptions of County machinery, equipment, facilities or operations that deliver or transfer wastewater to the Connection; and

1.7.5. strikes, whether widespread or local, that effect the delivery of critical equipment that cannot be substituted on a commercially reasonable basis.

The failure of a Party to pay fees and charges due hereunder, to pay taxes or to pay insurance premiums when due are not excused by an Event of Force Majeure.

1.8. Initial Authorized User means the first Authorized User within a given Thermal Use Area who has entered into a fully executed agreement with King County for the non-exclusive use of wastewater heat energy to or from the given Thermal Use Area and who remains in compliance with all terms and conditions of such agreement or a County-approved successor or assignee of the Initial Authorized User, which successor or assignee has been approved, in advance, in writing, by the County in the County's sole discretion and judgment, which shall not be unreasonably withheld, or its assignee pursuant to Section 18.2.

1.9. Permitted Assignee means any person receiving an assignment in compliance with Section 18.2.

1.10. Pre-Application Fee means the fee related to the County's initial review of a proposed Wastewater Thermal Energy User's proposal for a Connection.

1.11. Subsequent Authorized User means a user, other than the Initial Authorized User, within a given Thermal Use Area who has entered into a fully executed agreement with King County for the non-exclusive use of wastewater heat energy from the given Thermal Use Area and who remains in compliance with all terms and conditions of such agreement or a County-approved successor or assignee of the Subsequent Authorized User, which successor or assignee has been approved, in advance, in writing, by the County in the County's sole discretion and judgment, which shall not be unreasonably withheld.

1.12. Thermal Use Area means the facilities designated in this Agreement more specifically defined in Section 3 herein, from which wastewater heat energy may be transferred by the Authorized User pursuant to the terms and conditions set forth in this Agreement.

1.13. Wastewater Thermal Energy User-Owned ECS Components means all of the ECS Components, except the County Retained ECS Components.

2. Term and Milestones

2.1. Term. This Agreement shall become effective upon execution by both Parties (the “Effective Date”). This Agreement shall, unless sooner terminated as provided in Section 11 of this Agreement, remain in full force and effect until the 20th anniversary of the Effective Date (“Term”).

2.2. Milestones. The Parties agree to the following schedule of Milestones and Milestone Dates by which Wastewater Thermal Energy User shall complete or satisfy each Milestone:

Milestone	Milestone Date
Filing date for required Project Permits	N/A
Filing date for County (WTD) Connection Approval	N/A
Completion of Non-WTD Permit Acquisitions	N/A
Construction Start date	N/A
Deadline for Commercial Operation Date	N/A (system is currently operational)

If Wastewater Thermal Energy User fails to meet any of the Milestones by the applicable Milestone Date, then such failure may be considered a Wastewater Thermal Energy User Default event and the County shall have the right to terminate this Agreement in accordance with Section 11.

3. Thermal Use Area

3.1. For purposes of this Agreement, the Thermal Use Area is designated as beginning at the origin point of the effluent generated by South Treatment Plant and ending at the ECS Model Project feed force main to the Longacres Property, as depicted in Exhibit A. Wastewater Thermal Energy User is the Initial Authorized User in the Thermal Use Area.

3.2. During the term of this Agreement, the County may authorize other thermal energy transfer projects and may enter into use agreements with Subsequent

Authorized Users for use or transfer of wastewater thermal energy if the County determines in its reasonable discretion and judgment that such thermal energy transfer projects will not have a material adverse impact in the wastewater thermal energy otherwise available to the Wastewater Thermal Energy User. Before the County makes its determination, the County will seek input from Wastewater Thermal Energy User. The costs of the County's review of any other wastewater thermal energy transfer project(s) shall be borne solely by the proposed Subsequent Authorized User.

4. Connection to County Interceptor

4.1 Connection. The County shall allow Wastewater Thermal Energy User to utilize the existing feed force main and return force main connections to the South Plant effluent line, as depicted in Exhibit A, for the purpose of extracting or recovering wastewater heat energy, provided that the County explicitly approves, in writing, the design, engineering plans, and wastewater volume to be diverted through the Connection and provided that such Connection is otherwise consistent with the terms of the Agreement. Wastewater Thermal Energy User shall demonstrate that its technology and/or system for using and/or diverting wastewater flows to transfer heat energy will not chemically alter or modify the County's wastewater flows.

4.2 Design Standards. Wastewater Thermal Energy User shall design and construct any modifications to the existing Connection in conformance with County design standards and all applicable state and local laws and regulations.

4.2.1. After the Effective Date, the County shall provide Wastewater Thermal Energy User with potentially relevant and available as-builts, layout diagrams, plan and profile drawings for the section of the interceptor pipe and manhole locations where the connection(s) exists.

4.2.2. Prior to approval of any permit application for any modification to the Connection or Project with jurisdictions other than King County, Wastewater Thermal Energy User shall have first obtained the County's written approval of the Approved Final Design. The approval of other jurisdictions does not ensure approval by King County, and Wastewater Thermal Energy User proceeds at its own risk and expense.

4.3. Proper Design. The County's review of any design documents shall not relieve Wastewater Thermal Energy User from its obligation to properly design any modifications to the Connection and Project and to obtain all necessary permits and approvals for any modifications to the Connection and Project.

4.4. Flow Volume and Temperature. During normal operations, the effluent generated by the South Treatment Plant is in the temperature range of 55-75 degrees Fahrenheit. The County does not warrant, guarantee, or make any representation as to the temperature or flow volume of the wastewater conveyed to the Connection.

5. Wastewater Thermal Energy User Responsibilities for Operation of Connection

5.1. Wastewater Thermal Energy User shall comply with all applicable laws and regulations with respect to the operation and oversight of the Connection and Project.

Wastewater Thermal Energy User shall notify County within 48 hours of receiving any notice regarding noncompliance or alleged noncompliance by Wastewater Thermal Energy User with respect to the Connection or Project and shall provide County with a copy of such notice within ten (10) business days of receipt.

5.2. Overall Responsibility for Connection and Project. Wastewater Thermal Energy User shall operate the Connection and Project at its sole cost and expense. Wastewater Thermal Energy User shall be solely responsible for obtaining all permits and regulatory approvals for the any new design or installation, as well as operation of the Connection and Project, including the use of a public right of way or other public property.

5.3. No changes may be made to the Connection or the existing Project without the express written consent of the County, which consent shall not be unreasonably withheld, conditioned or delayed. If Wastewater Thermal Energy User requests a change to Connection or the existing Project or any part thereof, Wastewater Thermal Energy User shall comply with the provisions of Section 5.12 and also provide to the County for review a description of the requested change and reason for the requested change along with a copy of all plans, drawings, specifications and submittals regarding the requested change for County review and approval or denial. The County will use its best efforts to respond to the request within 60 days.

5.4. Following Wastewater Thermal Energy User's access to County property, Wastewater Thermal Energy User shall be responsible for repairing any damage to County property resulting from Wastewater Thermal Energy User's work on the property.

5.5. During the term of this Agreement the County may require additions and/or changes to the Connection or to the Project or to the Wastewater Thermal Energy User's operations of the Connection or the Project, if in the County's sole determination such additions or changes are necessary for the County to meet its maintenance, operational and/or permit requirements, including, but not limited to, the permit requirements for effluent temperature set forth in the then-applicable NPDES permit for South Plant.

5.6. If modifications to the Connection or the Project are approved by the County, then Wastewater Thermal Energy User will notify County upon completion of the construction of such modifications and will invite County to participate in a pre-final inspection of the completed work.

5.7. If modifications to the Connection or the Project are approved by the County, then County will inspect the completed modifications and will approve or reject construction or materials which are deficient, or which deviate from the County approved modifications. County will submit a written notice within ten (10) business days of the date of the pre-final inspection, notifying Wastewater Thermal Energy User that the modification has been constructed in accordance with the Approved Final Design, or rejecting the completed modification. In the event that the completed work is rejected, such notice will include a description of any known deficiencies so that the Wastewater Thermal Energy User can use the notice in determining appropriate remedies for each deficiency.

5.8. Once the Wastewater Thermal Energy User determines that all deficiencies have been remedied, Wastewater Thermal Energy User shall invite County to participate in a final inspection of the completed modifications.

5.9. The County shall not be responsible or obligated for any costs, change orders or delays associated with the construction of modifications to the Connection or the Project, subject to Section 12.2.

5.10. Any and all property of any kind or description whatsoever placed or moved onto the Connection, County property or the Project site by the Wastewater Thermal Energy User, its agents, contractors and invitees shall be at the Wastewater Thermal Energy User's sole risk, and the County shall not be liable for any damage done to, or loss of, such property, except to the extent that any such damage or loss is caused by the negligence or misconduct of County's employees, agents, consultants or contractors and subject to Section 12.2.

5.11. Wastewater Thermal Energy User shall, at its sole cost and expense, operate, maintain, repair and replace the Connection and the Project, including but not limited to the Wastewater Thermal Energy User-Owned ECS Components and any associated equipment necessary for the heat energy transfer process.

5.12. Wastewater Thermal Energy User shall reimburse County for any and all reasonable, documented costs and expenses, of any nature whatsoever (including, but not limited to County staff time, and invoices from contracted consultants, if any), for the work performed by the County pursuant to Sections 5.3, 5.6, 5.7, and 5.8, together with work undertaken by the County in supervising Wastewater Thermal Energy User's access to and work on County property. Prior to its submission of an application for a Connection modification approval, the prospective Wastewater Thermal Energy User shall submit a statement of intent to apply for a Connection modification approval and shall agree to attend a pre-application conference with the County. Along with its statement of intent to apply, the prospective Wastewater Thermal Energy User shall pay the County the full amount of the Pre-Application Fee, then in effect. The County and the prospective Wastewater Thermal Energy User shall participate in a pre-application conference. After the pre-application conference, the County will provide the

prospective Wastewater Thermal Energy User with an estimated budget for the County's review of the prospective Wastewater Thermal Energy User's proposal. But the prospective Wastewater Thermal Energy User shall in all events be responsible for the actual review costs incurred. If the County determines that the actual review costs are likely to exceed the estimated review budget, it shall notify the prospective Wastewater Thermal Energy User of the estimated additional amount and the reasons for the additional costs. Each month the County shall provide the prospective Wastewater Thermal Energy User with an invoice showing County costs and expenditures during the previous month, including staff time and invoices for contracted consultants, if any. The prospective Wastewater Thermal Energy User shall pay the invoices within thirty (30) days of the date thereof without offset or deduction for any reason. If the prospective Wastewater Thermal Energy User disagrees with a particular invoiced cost or expenditure, the prospective Wastewater Thermal Energy User and the County agree to use the dispute resolution procedures in Section 15 to resolve the dispute.

5.13. Pursuant to separate instrument, County will document the transfer to Wastewater Thermal Energy User of all Wastewater Thermal Energy User-Owned ECS Components, which instrument may also be executed by Boeing. Wastewater Thermal Energy User may divert, in accordance with this Agreement, wastewater at the Connection only upon the condition that the County retains the rights to such wastewater. Nothing in this Agreement shall be construed as transferring or granting any right, title or interest to Wastewater Thermal Energy User in the County's South Plant effluent line, the wastewater conveyed therein and/or the County's Wastewater Treatment System.

5.14. Wastewater Thermal Energy User shall not discharge any wastewater that originates in or from 1302 SW 16th Street, Renton, WA or any structures or buildings thereon, for the purpose of wastewater treatment, to the County's regional wastewater system via the Wastewater Thermal Energy User's connection.

5.15. Wastewater Thermal Energy User shall permit the County to install meters, sensors and communication equipment on the Wastewater Thermal Energy User-Owned ECS Components, and allow access to those meters, as necessary for the County to maintain equipment or collect and/or verify heat transfer data in order for the County to assess the Energy Transfer Fee.

5.16. Wastewater Thermal Energy User shall require in all contracts to construct any modifications to the Project an obligation for the general contractor and each subcontractor to pay not less than the prevailing rate of wage, as defined in RCW 39.12.010, to all workers, laborers and mechanics performing work on the Project.

6. Operation and Maintenance of County Facilities

6.1. The Parties agree that the primary responsibility of County is to operate the South Plant effluent line and the Wastewater Treatment System in a manner that

meets the County's wastewater disposal, environmental and public health objectives and obligations. Wastewater Thermal Energy User shall not interfere with County's South Plant effluent line or Wastewater Treatment System operations or facilities. County shall not move, interfere with, remove or work on any of the Wastewater Thermal Energy User-Owned ECS Components without Wastewater Thermal Energy User's prior written consent, in Wastewater Thermal Energy User's sole discretion, and shall request such consent not less than 30 days before County's anticipated work, except that in the case of emergency requiring the County to move, interfere with, remove or work on any of the Wastewater Thermal Energy User-Owned ECS Components to remedy imminent danger to persons or property, the County shall provide as much notice as reasonably possible and use good faith efforts to obtain Wastewater Thermal Energy User's consent.

6.2. The County's operation of its wastewater conveyance system shall have priority over Wastewater Thermal Energy User's operation of the Connection and the County may require Wastewater Thermal Energy User to temporarily suspend and/or terminate operation of the heat energy recovery operation at the Connection if the County determines in its sole discretion and judgment that such suspension of operation is necessary to ensure reliable performance of the wastewater system, subject to Section 6.4.

6.3. COUNTY MAKES NO WARRANTIES AS TO THE QUALITY OR QUANTITY OF WASTEWATER/SEWAGE AVAILABLE IN THE COUNTY'S SOUTH PLANT EFFLUENT LINE OR WASTEWATER TREATMENT SYSTEM OR DELIVERED TO THE CONNECTION OR TO WASTEWATER THERMAL ENERGY USER PURSUANT TO THIS AGREEMENT. COUNTY AND WASTEWATER THERMAL ENERGY USER AGREE THAT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE EXCLUDED FROM THIS AGREEMENT AND DO NOT APPLY TO THE HEAT ENERGY RECOVERY OPERATIONS OR FACILITIES DESCRIBED IN THIS AGREEMENT.

6.4. The County shall provide Wastewater Thermal Energy User with notice of any planned maintenance outages for the South Plant effluent line and/or the Wastewater Treatment System that would reduce the quantity of wastewater in the South Plant effluent line in the vicinity of the Connection. In the event the County reasonably anticipates that any event or events may result in an unscheduled outage for the South Plant effluent line and/or the Wastewater Treatment System that would reduce the quantity of wastewater in the South Plant effluent line in the vicinity of the Connection, the County shall provide written notice to Wastewater Thermal Energy User at least 30 days in advance of such planned reduction except that in the case of emergency requiring the County to reduce or interrupt service County shall provide as much notice as reasonably possible.

6.5. The Wastewater Thermal Energy User shall be responsible for the maintenance and operation of the Connection. Except as expressly provided in Section

12.2, COUNTY SHALL NOT BE LIABLE FOR ANY FAULT OR FAILURE OF THE SOUTH PLANT EFFLUENT LINE AND/OR ANY OTHER WASTEWATER TREATMENT FACILITIES OF THE COUNTY OR ANY LOSS OR DAMAGE TO THE CONNECTION OR THE PROJECT. Wastewater Thermal Energy User shall have no cause of action whatsoever against County for any temporary suspension or termination of operations or any resulting impacts to the Connection or Project.

6.6. The County hereby grants to Wastewater Thermal Energy User, together with its Representatives as defined below, a non-exclusive license of reasonable access to the County Property during the Term of this Agreement, for the purpose of operating, maintaining, repairing, and replacing those portions of the Wastewater Thermal Energy User-Owned ECS Components located on the County Property.

Wastewater Thermal Energy User will not permit any other person or entity, except Wastewater Thermal Energy User's duly authorized representatives, employees, agents, contractors, subcontractors, consultants, and independent contractors (collectively "Representatives") to enter or use the County Property. This Agreement shall expire at the end of the Term if not terminated earlier, and from and after such date Licensee shall cease all use of the County Property.

6.6.1 The Wastewater Thermal Energy User shall follow the procedures set forth in this Section to perform maintenance, repairs, and/or replacement, of the Wastewater Thermal Energy User-Owned ECS Components located on the County Property. Prior to accessing the County Property, Wastewater Thermal Energy User and/or its designated Representatives shall contact the County's Designated Representative listed in Section 6.6.3 below to arrange for access at least one (1) week in advance for routine or non-routine maintenance or repair. For emergency maintenance or repair, Wastewater Thermal Energy User shall give as much advance notice as reasonably practicable (by email or phone call). Prior to any access by the Wastewater Thermal Energy User and/or its agents, contractors or consultants (the "WTEU Party" or "WTEU Parties"), each such WTEU Party shall coordinate with the County to understand the County's protocols for access and any activity on the County Property. Such WTEU Party shall be responsible for providing adequate safeguards, safety devices, protective equipment and any other needed actions to protect the life, health and safety of WTEU Party's personnel, and to protect the County Property (except that with respect to emergency access, WTEU Party shall be entitled to use industry standard safety protocols in good faith). The WTEU Parties shall (1) comply with all applicable federal, state, and local laws, regulations, ordinances and Owner protocols and with the terms and conditions of all applicable governmental permits, licenses and approvals thereto; and (2) perform any activity in a safe and good workmanlike manner consistent with best industry practices and in such a way as to avoid, minimize and mitigate impacts upon County's operation and County's use of the County Property. WTEU Parties are expressly forbidden to undertake any new, different, or additional activities or purposes on the County Property other than the activities described herein, except with County's prior written consent, which consent may be withheld in County's sole and absolute discretion.

6.6.2 Wastewater Thermal Energy User shall not suffer or permit any lien, charge, security interest or encumbrance (collectively, "Liens") arising under this Agreement to be filed against the County Property. If any such Lien is filed, Wastewater Thermal Energy User shall, within thirty (30) days following the Wastewater Thermal Energy User becoming aware of such attachment, remove and discharge any and all such Liens, which may be accomplished by bonding over such Liens. Wastewater Thermal Energy User reserves the right to contest the validity or amount of any such Lien in good faith provided that, within thirty (30) days after the date on which Wastewater Thermal Energy User becomes aware of such Lien, Wastewater Thermal Energy User discharges such Lien of record or records a bond which eliminates said Lien as an encumbrance against the County Property. Wastewater Thermal Energy User shall defend, indemnify, protect, and hold County harmless from and against all liabilities, losses, damages, expenses and costs (including reasonable attorneys' fees and costs) incurred in connection with any such Liens, which indemnification shall survive the expiration or termination of this Agreement.

6.6.3 County's "Designated Representative" shall be:

Name: Curtis Steinke, South Plant Wastewater Process Engineer
Telephone No.: 206.263.1817
Email: Curtis.steinke@kingcounty.gov; and
website: wtd@kingcounty.gov

And for emergencies contact: South Plant Main Control (206) 263-1760

6.6.4 Wastewater Thermal Energy User's "Designated Representative" shall be:

Name: Darrin Williams
Telephone No: 206.628.5192
Email: darrinw@unicoprop.com

And for emergencies contact: Phil Bing, (206) 883-7074

7. Consideration to County for Use of County's Wastewater Heat

7.1. Annual Access Fee. In addition to all other charges set forth in this Agreement, Wastewater Thermal Energy User agrees to pay the County an initial energy transfer fee equal to \$0.005 per ton hour of energy (whether used for cooling or heating) transferred (the "Energy Transfer Fee") from the County's wastewater to the Project, due the Effective Date and thereafter annually on each anniversary of the Effective Date. A "Ton-hour" is measured as a function of the number of gallons of water, which pass through the Energy Transfer Station, the temperature difference of

the water at the delivery and return point, resulting in the aggregate BTU transfer occurring within the Energy Transfer Station. 1 ton-hour = 12,000 BTU.

Annual Increases of the Energy Transfer Fee shall be determined as follows:

On each anniversary date of the Effective Date during the Term, the Energy Transfer Fee shall be adjusted by the same percentage as the increase in CPI for All Urban Consumers (CPI-U) for Seattle-Tacoma-Bellevue such that each year the amount payable is equal to the prior year's transferred energy multiplied by the prior year's fee rate escalated by an amount equal to the percentage increase in CPI-U Seattle-Tacoma-Bellevue for each year. The Energy Transfer Fee is due on the anniversary of the Effective Date of each year of this Agreement.

For example, if the CPI-U Seattle-Tacoma-Bellevue increases during year one by 3%, then on the anniversary date of the Effective Date at the end of year two of the Term, the amount payable shall be $.005 \text{ per ton-hour} \times 1.03 = 0.0053$ x the ton-hours from year two = the total due for year two. If the CPI-U Seattle-Tacoma-Bellevue then increases by 2.5% during year two, then at the end of year three, the amount payable shall be $.0053 \times 1.025$ x the ton-hours from year three.

7.2. Renewable Energy Credits (RECs), Rights and Interests. To the extent that any Renewable Energy Credits (as defined by Washington state initiative 937), Federal Renewable Energy Certificates and/or any other federal, state or local renewable energy credits, benefits, environmental air quality or emissions credits, or any similar rights or benefits (collectively, "Environmental Credits") are available or become available for the Project or Connection that are attributable to the wastewater heat provided by the County, during the term of this Agreement, Wastewater Thermal Energy User shall offer ownership of one-half (50%) of such Environmental Credits or agree to pay to County, in addition to all other payments hereunder, one-half (50%) of any such available credits.

7.3. Late Payments. Any payments due hereunder shall bear interest at the rate of 12% per annum, one percent per month from and after their due date if not timely paid.

8. Wastewater Thermal Energy User's Representations and Warranties

8.1. Wastewater Thermal Energy User makes the following representations and warranties to the County, all of which are made as of the execution of this Agreement:

8.1.1. Organization. Wastewater Thermal Energy User is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, is qualified to do business in the State of Washington and has the power and authority to enter into the transactions contemplated hereunder, and to execute, deliver and perform its obligations under this Agreement.

8.1.2. Authorization. Wastewater Thermal Energy User's execution and delivery of and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary action of Wastewater Thermal Energy User. This Agreement constitutes a legal, valid and binding obligation of Wastewater Thermal Energy User and is enforceable against it in accordance with its respective terms.

8.1.3. Litigation, etc. To Wastewater Thermal Energy User's knowledge, there are no actions, suits, claims, complaints, investigations or legal or administrative or arbitration proceedings pending or threatened, whether at law or in equity, whether civil or criminal in nature, or whether before any governmental authority or arbitrator against or affecting Wastewater Thermal Energy User which could reasonably be expected to have a material adverse effect on Wastewater Thermal Energy User or its ability to perform its obligations under this Agreement. There is no outstanding order, writ, injunction, decree, judgment or award by any court, arbitration panel or governmental authority against or affecting Wastewater Thermal Energy User which could reasonably be expected to have a material adverse effect on Wastewater Thermal Energy User or its ability to perform its obligations under this Agreement.

8.1.4. No Conflict. None of the execution or delivery of this Agreement, the performance by Wastewater Thermal Energy User of its obligations hereunder or the fulfillment of the terms and conditions hereof shall: (i) violate any provision of Wastewater Thermal Energy User's organizational documents or (ii) violate or result in the breach of, or constitute a default under or result in the imposition or creation of, any security under any agreement or instrument to which Wastewater Thermal Energy User is a party or by which it or any of its properties or assets are bound.

9. Records and Audits

9.1. Wastewater Thermal Energy User shall maintain current and accurate records of various ongoing data points for the Project and will make those records available to the County for the life of the Connection. Data points include, but are not limited to, the amount of wastewater diverted, amount of heat transferred to or from wastewater and all Wastewater Thermal Energy User's records that are necessary to determine the Energy Transfer Fee payments to be made to the County pursuant to this Agreement, including, but not limited to, records of energy transferred as part of the Project. Other data points, records, as-builts and other information to be tracked and reported by Wastewater Thermal Energy User to the County will be designated by the County no later than the date of the Approved Final Design once the specific technology, engineering and operations have been more clearly defined. Wastewater Thermal Energy User shall make such records and data available to County or its designees or representatives, upon not less than two (2) business days' prior notice and during normal business hours, as may be required to determine whether all obligations are being performed in conformity with this Agreement. Within fifteen (15) business days of receiving written notice from the County requesting copies of specific records,

the Wastewater Thermal Energy User shall electronically transmit such requested records to the County at the email address provided in the written notice.

9.2. County shall have the right, at its own cost and expense, from time to time and upon reasonable notice to Wastewater Thermal Energy User and during normal business hours, to (a) examine the records and data of Wastewater Thermal Energy User required to be maintained under Section 9.1 and (b) cause an audit to be made, at County's sole cost, with respect to any amounts claimed as being due from Wastewater Thermal Energy User to County hereunder.

10. Force Majeure

10.1. Effect of Event of Force Majeure. If a Party is prevented, hindered or delayed from performing any of its obligations under this Agreement (excluding an obligation hereunder of a Party to pay money to the other Party, pay taxes or insurance premiums when due, or perform any indemnity obligation hereunder) by event of Force Majeure, then so long as that situation continues and such Party satisfies its obligations under Section 10.2, such affected Party shall be excused from performance of such obligations to the extent it is so prevented, hindered or delayed, and the time for the performance of such obligations shall be extended accordingly. County shall be excused from performance of such obligations.

10.2. Notice of Event of Force Majeure. The Affected Party shall notify the Other Party within ten (10) days of the occurrence of the Event of Force Majeure, its effect or likely effect on the Affected Party's ability to perform its obligations hereunder and the likely duration of the Event of Force Majeure. The Affected Party shall keep the non-Affected Party informed of any changes in such circumstances, including when such Event of Force Majeure ends. Following the receipt of a notice given pursuant to this Section 10.2, the Parties shall consult in good faith to assess the Event of Force Majeure, the effects thereof and any ways in which it may be mitigated or avoided. Each Party shall attempt in good faith to notify the other Party of any events of which the notifying party is aware which may be reasonably expected, with the lapse of time or otherwise, to become an Event of Force Majeure.

10.3. Termination for Extended Force Majeure. Notwithstanding the foregoing, if an event of Force Majeure has prevented the Affected Party from performing any of its obligations under this Agreement for ninety (90) consecutive days, then either Party, as its sole and exclusive right and remedy in the case of such extended Event of Force Majeure, may terminate this Agreement by providing a Notice of Termination to the other Party. In such case, the Agreement shall terminate on the date set forth in such Notice.

11. Defaults, Termination and Remedies

11.1. Termination before Construction of Connection. Either Party may terminate this Agreement prior to the initiation of construction of the Connection, by

providing ten (10) days written notice to the other Party, in which case each Party shall bear their own costs incurred to the date of such termination. In such case the Agreement shall terminate on the tenth (10th) day following the effective date of such notice.

11.2. Termination after Construction of Connection.

11.2.1. The County may terminate this Agreement (a) on twelve (12) months' prior written notice to Wastewater Thermal Energy User if in its sole determination and judgment the County determines that operation of the Connection is interfering with the County's ability to comply with good engineering and maintenance practices and/or applicable federal, state and local laws and/or County permit conditions, or (b) on ninety (90) days' prior written notice if Wastewater has suspended use of the Project for a period of twenty-four (24) months without having first obtained County's consent to such suspension (which consent shall not be unreasonably withheld, conditioned or delayed). In either case, the Agreement shall terminate on the date set forth in such notice.

11.2.2 Wastewater Thermal Energy User may terminate this Agreement for any reason or no reason by providing not less than thirty (30) days written notice to the County and the Agreement shall terminate on the date set forth in such notice.

11.3. Events of Default. Each of the following events shall constitute events of default which, if not cured within the time permitted (if any) to cure such event of default, shall entitle County to terminate this Agreement pursuant to Section 11.4:

11.3.1 Wastewater Thermal Energy User fails to operate, maintain in good working order, repair, and/or replace as necessary, the Connection, the Project and/or any of the Wastewater Thermal Energy User-Owned ECS Components and such failure is not cured within thirty (30) days after written notice thereof.

11.3.2. Wastewater Thermal Energy User sells or in any other manner conveys or transfers title to or any interest in the Energy Transfer Station or any right or obligation under this Agreement except in accordance with Section 18.2 below.

11.3.3. Wastewater Thermal Energy User fails to meet any of the Milestones by the applicable Milestone Dates set forth in Section 2 of this Agreement.

11.3.4. The failure by Wastewater Thermal Energy User to make any payment required to be made under this Agreement to County when due, where such failure shall have continued for ten (10) days after written notice thereof has been given by County to Wastewater Thermal Energy User.

11.3.5. The failure by Wastewater Thermal Energy User to comply with any covenant, obligation, or agreement of Wastewater Thermal Energy User contained in this Agreement.

11.3.6. Wastewater Thermal Energy User commences dissolution or is terminated or administratively dissolved or ceases to operate the Energy Transfer Station.

11.3.7. Wastewater Thermal Energy User commences a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing.

11.3.8. Wastewater Thermal Energy User has an involuntary case or other proceeding commenced against it seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property and such involuntary case or other proceeding shall remain undismissed for a period of sixty (60) days; or an order for relief shall be entered against it under the federal bankruptcy laws as now or hereafter in effect.

11.3.9. Any representation or warranty made by Wastewater Thermal Energy User in this Agreement shall prove to have been incorrect in any material respect when made or when deemed to have been made.

11.4 Termination Procedure for Events of Default.

11.4.1. Upon the occurrence of an event of default that is not cured within the applicable period (if any) for cure, under Section 11.3 of this Agreement, the County may, at its option, initiate termination of this Agreement by delivering a Notice of Intent to Terminate this Agreement to Wastewater Thermal Energy User. The Notice of Intent to Terminate shall specify in reasonable detail the applicable default giving rise to the Notice of Intent to Terminate.

11.4.2. Except as otherwise provided herein, if the basis for termination is a failure to perform that can be cured, the termination shall not take effect so long as the Wastewater Thermal Energy User cures the default within thirty (30) days of service of the Notice of Intent to Terminate. Unless the default is remedied within the thirty (30) days, the County may terminate this Agreement by delivering a Termination Notice to Wastewater Thermal Energy User, whereupon this Agreement shall terminate on the

date set forth in the Termination Notice (which date shall in no event be earlier than the date such Termination Notice is delivered to the Wastewater Thermal Energy User). No Cure Period shall be required for a default under Section 11.3.2 or 11.3.3. The Agreement may be terminated by a Termination Notice based upon a default of Section 11.3.2 or 11.3.3 if the default is not fully remedied within ten (10) days of the sending of the Notice of Intent to Terminate.

Any notices required by this Section 11.4 shall be in writing and shall be deemed to have been duly delivered or given by any of the following methods: (1) if delivered personally, (2) if sent by nationally recognized overnight delivery service, (3) if mailed or deposited in the United States mail, postage prepaid, (4) if mailed or deposited in the United States mail by registered or certified mail, return receipt requested, postage prepaid, (5) if sent by electronic mail or email to the Party set forth in Section 16 (provided the email has a confirmation of receipt). All notices that are mailed (except notices that are electronically mailed) shall be deemed received three (3) business days after mailing. All other notices, including notices that are electronically mailed (or e-mailed) shall be deemed complete upon the date that such notice is sent or given.

11.4.3. Removal of Property. In the event of default by the Wastewater Thermal Energy User, following termination pursuant to this Section 11.4, the County shall have the right, but not the obligation, to remove from County property all above-ground portions of the Connection and all above-ground equipment, pipes, conduits and related facilities, including all Wastewater Thermal Energy User-Owned ECS Components (other than the Support Slab, the Return structure at STA 4 +79.55 and the feed force mains and any other underground components), and any and all of Wastewater Thermal Energy User's personal property, goods, and effects located therein, and may dispose of such property, in any manner, without further notice, at Wastewater Thermal Energy User's cost and expense.

11.5. Cumulative Remedies. In the event of default, the County may pursue any remedy at law or in equity, including termination of this Agreement without prejudice to any rights or actions or remedies it may have in respect of any breach or default of this Agreement or any rights or obligations which expressly survive termination of this Agreement.

11.6. Duties Upon Expiration or Termination of Agreement. Upon termination of this Agreement and unless otherwise arranged, the County shall close the Connection such that effluent no longer flows through the ECS Components and Wastewater Thermal Energy User shall, within 180 days after termination use reasonable care to remove from County property, all above-ground portions of the Connection and all above-ground equipment, pipes, conduits and related facilities, including all ECS Components (other than the Support Slab, the Return structure at STA 4 +79.55 and the feed force mains and any other underground components) and any and all of Wastewater Thermal Energy User's personal property, goods, and effects. If the Wastewater Thermal Energy User fails to perform this duty within such 180-day period, the County may cause such removal to be made at Wastewater Thermal Energy User's

cost and expense. Any personal property, goods and effects that remains on the County property after the expiration or termination of this Agreement shall be deemed abandoned by Wastewater Thermal Energy User and County may dispose of such property in any manner, without further notice, at Wastewater Thermal Energy User's cost and expense.

11.7 Mutual Waiver of Certain Damages. In no event shall any Party or its respective managers, members, shareholders, affiliates, partners, consultants, representatives, successors and assigns, be liable hereunder at any time for punitive, incidental, consequential, special or indirect damages, including loss of future profits, revenue or income, or loss of business reputation, whether in contract, tort (including negligence), strict liability or otherwise, and each Party hereby expressly releases each other Party, and their respective managers, members, shareholders, affiliates, partners, consultants, representatives, successors and assigns therefrom.

12. **Obligation to Defend and Indemnify**

12.1. Wastewater Thermal Energy User shall hold harmless, indemnify and defend the County, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including but not limited to costs and reasonable attorney's fees in defense thereof, for non-payment of wages, injury, sickness, disability or death to persons or damage to property or business or to owners of property in the vicinity of the Project, caused by or arising out of (a) Wastewater Thermal Energy User's acts, errors or omissions in the performance of this Agreement, (b) Wastewater Thermal Energy User's operation, modification and maintenance of the Connection, the Wastewater Thermal Energy User-Owned ECS Components, and/or the Project, except to the extent falling within County's liability pursuant to Section 12.2 or if the acts or omissions are of other wastewater thermal energy users or other third parties not under Wastewater Thermal Energy User's control. Additionally, Wastewater Thermal Energy User agrees to release and hold the County harmless from claims, actions, suits, liability, loss, expenses, damages and judgments arising out of the design and construction of the Connection, the Wastewater Thermal Energy User-Owned ECS Components, and/or the Project.

12.2. County shall hold harmless, indemnify and defend Wastewater Thermal Energy User, its officers, members, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including but not limited to costs and reasonable attorney's fees in defense thereof, for non-payment of wages, injury, sickness, disability or death to persons or damage to property or business or to owners of property in the vicinity of the Project, caused by or arising out of (a) County's negligence, intentional misconduct or violation of law with respect to the Connection, the Project or the ECS Components, or (b) County's breach of this Agreement except to the extent falling within Wastewater Thermal Energy User's liability pursuant to Section 12.1, or that of the acts or omissions of other wastewater thermal energy users or other third parties not under County's control.

Additionally, County agrees to release and hold Wastewater Thermal Energy User harmless from claims, actions, suits, liability, loss, expenses, damages and judgments arising out of the design and construction of the Connection, the Wastewater Thermal Energy User-Owned ECS Components, and/or the Project arising before the date of this Agreement.

12.3 The obligations of Wastewater Thermal Energy User under Section 12.1 and the obligations of County under Section 12.2 (in each case, "Indemnitor") shall include, but not be limited to:

12.3.1. The duty to promptly accept tender of defense and provide defense to the other Party and its officers, members, officials, employees and agents (in such case, "Indemnitee") at the Indemnitor's own expense;

12.3.2. The duty to indemnify and defend the Indemnitee from any claim, demand and/or cause of action brought by or on behalf of any of Indemnitor's employees or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of each Indemnitor's immunity under Washington's Industrial Insurance Act, RCW Title 51, as to the Indemnitee, in order to provide the Indemnitee with a full and complete indemnity and defense of claims made by Indemnitor's employees. The Parties acknowledge that these provisions were mutually negotiated by them and each party has had the opportunity, and has been encouraged, to consult with independent counsel regarding this waiver.

13. Insurance

13.1. At all times during the term of this Agreement, Wastewater Thermal Energy User shall procure and maintain the minimum insurance set forth below. By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to Wastewater Thermal Energy User, or that of any subcontractor, under this Agreement. Wastewater Thermal Energy User and its subcontractor(s) shall assess their own risks and if they deem appropriate and/or prudent, maintain greater limits and/or broader coverage. Any provision in any Wastewater Thermal Energy User, or subcontractor, insurance policy that restricts scope of coverage or available limits of liability to those specified in a written agreement or contract shall not apply.

Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, Wastewater Thermal Energy User warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of construction of the Project and Connection which is the subject of this Agreement. All insurance written on a "claims made" form must have its retroactive date be no later than the effective date of the Agreement or when the construction of the

Project and Connection begins. Insurance coverage shall be at least as broad as stated below and with limits no less than:

13.1.1. General Liability. Coverage shall be at least as broad as Insurance Services Office form number CG 00 01 or its substantive equivalent, covering COMMERCIAL GENERAL LIABILITY. \$5,000,000 combined single limit per occurrence and for those policies with aggregate limits, a \$5,000,000 aggregate limit. Such insurance shall include coverage for, but not limited to, premises liability, ongoing operations, contractual liability, products and completed operations. Such limits may be satisfied with the use of an umbrella or excess liability policy, which is at least as broad as the underlying policy.

13.1.2. Automobile Liability. Coverage shall be at least as broad as Insurance Services Office form number CA 00 01, or its substantive equivalent covering BUSINESS AUTO COVERAGE, symbol 1 “any auto”; or the combination of symbols 2, 8, and 9. \$1,000,000 combined single limit per accident for bodily injury and property damage. Such limits may be satisfied with the use of an umbrella or excess liability policy, which is at least as broad as the underlying policy.

13.1.3. Workers’ Compensation. Statutory requirements of the State of residency. Coverage shall be at least as broad as Workers’ Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or “other States” State Law.

13.1.4. Employer’s Liability or “Stop Gap”. Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the “Stop Gap” endorsement to the general liability policy. Limit: \$1,000,000.

13.2. Any deductible and/or self-insured retentions of the policies shall not limit or apply to Wastewater Thermal Energy User’s liability to the County and shall be the sole responsibility of Wastewater Thermal Energy User or its subcontractor(s).

13.3. The insurance policies required in this Agreement are to contain and be endorsed to contain the following provisions:

1. With respect to all Liability Policies and Workers Compensation:
 - (a) The County, its officers, officials, employees, agents, and representatives are to be covered and named as additional insureds, for full policy limits, as respects liability arising out of activities performed by or on behalf of the Wastewater Thermal Energy User in connection with this Agreement. Additional Insured status shall include Products-Completed Operations-CG 20 10 11/85 or its substantive equivalent.

- (b) Wastewater Thermal Energy User's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, agents, and representatives. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees, agents and representatives shall not contribute with Wastewater Thermal Energy User's insurance or benefit the Wastewater Thermal Energy User in any way.
- (c) Wastewater Thermal Energy User's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

13.4. Unless otherwise approved by the County:

1. Insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated with Best's, with minimum surpluses the equivalent of Best's surplus size VIII.
2. Professional Liability, Errors and Omissions insurance may be placed with insurers with a Best's rating of B+; VII.

If at any time the foregoing required policies shall fail to meet the above minimum requirements, Wastewater Thermal Energy User shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

13.5. Wastewater Thermal Energy User shall include all subcontractors as insured under its policies, or, alternatively, Wastewater Thermal Energy User must require each of its subcontractors to procure and maintain appropriate and reasonable insurance coverage and minimum insurance limits to cover each of the subcontractor's liabilities given the scope of work and the services being provided herein. All liability insurance policies (except Professional Liability and Workers' Compensation) provided by the subcontractor(s) must include the County, its officers, officials, agents and employees as named additional insured, for full policy limits. Wastewater Thermal Energy User is obligated to require and verify that all subcontractors maintain insurance and ensure that the County is included as a named additional insured. Upon request, and within five (5) business days, Wastewater Thermal Energy User must provide evidence of subcontractor insurance coverage (including endorsements) to the County.

14. **Environmental Liability**

14.1. Wastewater Thermal Energy User covenants and warrants that Wastewater Thermal Energy User, its employees, contractors, agents or invitees shall not use the Connection or any County property in a manner which violates any applicable federal, state or local law, regulation or ordinance governing the handling, transportation, storage, treatment, usage or disposal of Hazardous Materials.

14.2. Wastewater Thermal Energy User shall not, without first obtaining the County's written approval, which may be denied in County's sole discretion and

judgment, apply, store, deposit, transport, release or dispose of any hazardous substances, petroleum products, wastewater/sewage, medicinal, bacteriological, or toxic materials, or pollutants, in the Connection or on County property. All approved application, storage, deposit, transportation, release and disposal shall be done safely and in compliance with applicable laws.

14.3. To the extent occurring as a result of Wastewater Thermal Energy User's access to County property, Wastewater Thermal Energy User shall immediately notify the County of any and all spills or releases of any Hazardous Materials in, on or near County property, all failures to comply with any federal, state, or local law, regulation or ordinance, all inspections of the Connection, Wastewater Thermal Energy User-Owned ECS Components, and/or Project site by any regulatory entity concerning the same, all regulatory orders or fines, and all response or interim cleanup action taken by or proposed to be taken by an government entity or private party on the Project site.

14.4. Notwithstanding any approval that the County may provide pursuant to Section 14.2 above, Wastewater Thermal Energy User shall be fully and completely liable to County for any and all cleanup costs, and any and all other charges, fees, penalties (civil and criminal) imposed by any federal, state or local governmental agency or political subdivision with respect to Wastewater Thermal Energy User's use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials in or about the Connection, the Project site or County property to the extent arising from Wastewater Thermal Energy User's negligence or intentional misconduct. Wastewater Thermal Energy User shall indemnify, defend, and hold harmless the County from any costs, fees, claims, judgments, damages, penalties, fines, expenses, liabilities (including sums paid in settlements of claims) or loss arising out of or in any way relating to Wastewater Thermal Energy User's negligence or intentional misconduct in the use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials on County property, or from Wastewater Thermal Energy User's failure to provide all information, make all submissions, and take all steps required by any federal, state or local governmental agency or political subdivision under any applicable laws with respect to Wastewater Thermal Energy User's use or disposal of Hazardous Materials within the Connection.

Such indemnity shall include, without limitation, reasonable attorneys' fees, consultants' fees, and expert fees, as well as costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision. Notwithstanding the foregoing, in no event shall Wastewater Thermal Energy User bear liability to the County to the extent arising from Hazardous Materials contained within the Connection through no fault of Wastewater Thermal Energy User.

14.5. For the purposes of this section, "Hazardous Materials" includes but is not limited to any material or substance which is (1) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Liability and

Compensation Act, 42 U.S.C. 9601(14); (2) defined as a “hazardous Waste” pursuant to Section 1004 or Section 3001 of the Resource, Conservation and Recovery Act, 42 U.S.C. 6903, 42 U.S.C. 6921; (3) included on the toxic pollutant list under Section 307(a) of the Federal Water Pollution Control Act, 33 U.S.C. 1317(a); (4) defined as a “hazardous Substance” pursuant to Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. 1321; (5) defined as a “hazardous air pollutant” under Section 112 of the Clean Air Act, 42 U.S.C. 7412; (6) defined as a “hazardous substance” under Washington’s Hazardous Waste Cleanup Act, RCW 70.105B.020; (7) defined as a “hazardous substance” pursuant to the hazardous waste site cleanup law, the Model Toxics Control Act ((initiative 97). “Hazardous Materials” specifically includes, but is not limited to, asbestos, polychlorinated biphenyls (PCBs), petroleum and petroleum products, and urea formaldehyde.

14.6. The covenants and warranties in this Section 14 shall survive the termination of this Agreement for any reason and in the event of a conflict with other provisions of this Agreement, the provisions of this Section 14 control.

15. Dispute Resolution

15.1. The Parties shall work collaboratively in accordance with the following steps to resolve disagreements from activities performed under this Agreement. In the event of a dispute, the disputing Party shall notify the other Party in writing of any problem or dispute which the disputing Party believes needs formal resolution. This written notice shall include: (1) a description of the issue to be resolved; (2) a description of the difference between the Parties on the issue; and (3) a summary of steps taken by the disputing Party to resolve the issue. The Parties shall meet within five (5) business days of receiving the written notice and attempt to resolve the dispute.

15.2. The Parties agree that they shall have no right to seek relief under this Agreement in a court of law until and unless the procedures in Section 15.1 are exhausted; provided that this requirement shall not apply if the applicable statute of limitations will run during the time that may be required to exhaust the procedural steps set forth in Section 15.1.

16. Notices

16.1. Unless otherwise specified in this Agreement, whenever any notice, submissions or communications are required to be given by either Party to the other pursuant to provisions of this Agreement or any law, present or future, they shall be in writing and shall be deemed to have been duly given or sent if delivered personally, sent by nationally recognized overnight delivery service or sent by email or sent by United States Mail addressed as follows::

If to County:

King County
Wastewater Treatment Division
KSC-NR-0507
Attn: Director of Wastewater Treatment Division
201 S. Jackson Street
Seattle, WA 98104-3855
Email: Kgurol@kingcounty.gov

AND TO

King County South Plant
Operations Manager
1200 Monster Rd. SW
Renton, WA. 98057
Email: website.wtd@kingcounty.gov

WITH A COPY TO:

King County Prosecutor's Office, Civil Division
701 5th Avenue, Suite 600 Seattle, WA 98104
Attn: Verna P. Bromley
Sr. Deputy Prosecuting Attorney
Email: Verna.bromley@kingcounty.gov

If to Wastewater Thermal Energy User:

Unico Longacres Central Systems LLC
c/o Unico Properties LLC
1326 Fifth Avenue, Suite 800
Seattle, WA 98101
Attn: Darrin Williams
Email: darrinw@unicoprop.com

WITH A COPY TO:

Fikso Kretschmer Smith Dixon Ormseth PS
901 Fifth Avenue, Suite 4000
Seattle, WA 98164
Attn: Marc T. Kretschmer Email: marc@fkso.com

Or, to such other person or address as is hereafter designated in writing by either Party to the other. Each Party may change its notice address set forth in this section by giving notice of a new address to the other Party in accordance with this section.

All notices that are mailed shall be deemed received three (3) business days after mailing. All other notices shall be deemed complete upon actual receipt or refusal to accept delivery.

17. Taxes.

17.1. General. Wastewater Thermal Energy User shall pay all taxes that may be levied upon or assessed against the Project site and any other of its property, including personal property that it owns or uses in connection with this Agreement and any taxes imposed on its income.

17.2. Excise Taxes. Wastewater Thermal Energy User is also responsible for the payment of all taxes and assessments imposed upon Wastewater Thermal Energy User with respect to its activities under this Agreement.

18. Miscellaneous

18.1. The Parties shall coordinate regarding any publicity or media relations related to the Project.

18.2. Assignment. The Wastewater Thermal Energy User shall not have a right to assign the Agreement or any of Wastewater Thermal Energy User's rights or obligations under this Agreement without the written consent of the County, which consent shall not be unreasonably withheld, conditioned, or delayed. At least 30 days prior to any proposed assignment of this Agreement, Wastewater Thermal Energy User shall deliver notice to the County of such intended assignment, which notice shall include the name of the proposed assignee and a short narrative description of the purpose of the proposed assignment.

18.3. Modification. This Agreement shall not be amended, changed, or modified except by a subsequent agreement in writing which indicates that such writing is intended to amend the terms of this Agreement and is signed by duly authorized officers of both Parties. The Parties agree that this Agreement shall not be amended in any manner by any course of dealing between the Parties. Any material modification or amendment to this Agreement must be approved, in advance, by the King County Council.

18.4. Waiver. No delay or forbearance by a Party in exercising any right, power or remedy accruing to such Party upon the occurrence of any breach or default by the other hereto under this Agreement shall impair any such right, power or remedy of such Party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein.

18.5. Entire Agreement. This Agreement contains and integrates the complete agreement between the Parties with respect to the subject matter hereof and supersedes

all other agreements and understandings between the Parties, whether written or oral, with respect to the subject matter hereof.

18.6. Relationship of Parties. The relationship of the Parties shall be that of independent contractors. Neither this Agreement nor the performance by the Parties of their respective obligations under this Agreement shall create or constitute, or be construed to create or constitute, a partnership, joint venture, or association, or establish a fiduciary relationship, a principal and agent relationship or any other relationship of a similar nature, between County and Wastewater Thermal Energy User.

18.7. Third Party Beneficiary. This Agreement is for the sole and exclusive benefit of the Parties hereto and shall not create a contractual relationship with, or cause of action in favor of, any third party.

18.8. Governing Law and Venue. This Agreement and any provisions contained herein shall be governed by, and construed and interpreted in accordance with, the laws of the State of Washington. The Superior Court of King County in Seattle, Washington shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

18.9 Public Records Act.

18.9.1. The Wastewater Thermal Energy User acknowledges that all records, contracts, data and other records owned, used, or held by the County relating to this Agreement shall be open to the inspection of any interested third-party person, firm or corporation in accordance with the chapter 42.56 RCW, the Public Records Act, and RCW 39.10.470, except as provided in Section 18.10.2.

18.9.2. The term “confidential record” includes trade secrets, as defined in RCW 19.108.010, or other proprietary information submitted by the Wastewater Thermal Energy User in connection with this Agreement. While the County may use the confidential records to develop reports, it shall not release to third parties confidential records except as provided by this section. If the County receives any public records request for identified confidential records, the County will notify the Wastewater Thermal Energy User of the request and of the date that the County will disclose such confidential records, which shall not be less than ten (10) days from the date of such notice unless the Wastewater Thermal Energy User obtains a court order directing the County to withhold such confidential records pursuant to RCW 42.56.540. If the Wastewater Thermal Energy User fails to obtain such court order before the close of business on the tenth day after the date of notification, then the County may release the records at issue.

18.10. Severability. If any provision of this Agreement shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of

applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

18.11 Costs. Each of the Parties shall pay its own costs and expenses of and incidental to the negotiation, preparation and completion of this Agreement and shall not have any right to claim or seek reimbursement of such costs and expenses from the other Party.

18.12 Time is of the Essence. Except as the context specifically otherwise requires, time is of the essence with respect to all dates and time periods set forth in this Agreement.

18.13. Schedules; Exhibits. The Schedules and Exhibits to this Agreement are incorporated by reference into, and shall form part of this Agreement, and shall have full force and effect as though they were expressly set out in the body of this Agreement; provided, however, that in the event of any conflict between the terms, conditions and provisions of this Agreement (excluding the Exhibits and Schedules thereto) and the Schedules or Exhibits hereto, the terms of this Agreement (excluding the Exhibits and Schedules thereto) shall prevail.

18.14. Counterparts. This Agreement may be executed in one or more counterparts (including facsimile or electronically delivered copies), and may be executed by electronic signature, each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

KING COUNTY

By: _____

Name: Kamuron Gurol

Title: Director, King County Wastewater Treatment Division

WASTEWATER THERMAL ENERGY USER:

LONGACRES OWNERS ASSOCIATION,
a Washington nonprofit corporation

By: _____

Name: _____

Its: _____

EXHIBIT A
DEPICTION OF LONGACRES PROPERTY

