

Sewer Heat Recovery Pilot Project Annual Report

June 1, 2022



King County

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II. Executive Summary

This is the second annual report required by Ordinance 19161.¹ The Sewer Heat Recovery Pilot is a King County initiative led by the Department of Natural Resources and Parks (DNRP) to make sewer heat, currently an underutilized, renewable, and carbon-free energy source, available to private property owners within the County's sewer service area.

Sewer heat recovery is a relatively simple technology for heating and cooling buildings that is achieved through transferring heat energy into or out of sewer lines, depending on the temperature of the sewage relative to the desired temperature of the building. Heated water used for showers, laundry, dishwashers, and sinks is hot when discharged into sewer pipes. Temperatures of wastewater flows in sewer pipelines average between 65-70 degrees over the course of the sewer network. When sewer heat replaces fossil fuel energy sources, greenhouse gas (GHG) emissions are avoided. This is a new tool that King County can offer developers to help lower the region's carbon footprint and benefit our communities. Additionally, when used for cooling, the technology has the potential to eliminate cooling towers from buildings, which creates opportunities for significant savings in potable water.

Sewer heat recovery technology is well-established in other parts of the world, with private developers using sewer heat recovery to heat and cool buildings, but this type of public-private agreement for sewer heat recovery has been rare in the U.S. until recently.²

Ordinance 19161 also authorizes the King County Executive to designate up to three pilot projects for sewer heat recovery and provides an agreement template to be signed with each project developer.

The Ordinance requests reporting on four main aspects of the sewer heat recovery pilot: level of interest from potential users; user cost; user carbon footprint; and cost-benefit analysis for each pilot project. This report contains data gathered on the level of interest from potential users since the Ordinance took effect in October 2020. Subsequent annual reports will include all elements as required by the Ordinance as pilot projects are constructed and operational.

DNRP has received a total of three applications for the pilot project. Two applicants withdrew after determining that sewer heat recovery was not a good fit for their project. Pandemic-related commercial real estate volatility has been a challenge for this pilot. In conversations with DNRP staff, developers have noted that they are rethinking capital investments, including implementing sewer heat recovery, due to rapid changes in office use and difficulty in predicting the future of commercial real estate.

Two slots remain open for the pilot. DNRP continues to receive inquiries and is accepting applications on a first-come, first-served basis.

Information on user costs and user carbon footprint, as well as cost-benefit analysis for each pilot project, will be provided in subsequent annual reports when the projects are further along.

¹ [Ordinance 19161 – See Appendix A.](#)

² [“Sewer Heat Recovery Provides Low-Cost Recycled Energy,”](#) Informed Infrastructure Magazine, October 23, 2012.

III. Background

Department Overview: DNRP works in support of sustainable and livable communities and a clean and healthy natural environment. Its mission is to foster environmental stewardship and strengthen communities by providing regional parks, protecting the region's water, air, land, and natural habitats, and reducing, safely disposing of, and creating resources from wastewater and solid waste.

The Wastewater Treatment Division (WTD) of DNRP protects public health and enhances the environment by collecting and treating wastewater while recycling valuable resources for the Puget Sound region. The Sewer Heat Recovery Pilot is led by staff within the Resource Recovery Section of WTD.

The Resource Recovery Section in WTD manages the administration and delivery of products and programs related to renewable resources captured from the wastewater treatment process.³ The Resource Recovery Section is comprised of a strategic support team and five programs: Sustainability, Technology Assessment and Innovation, Energy, Recycled Water, and Biosolids. The Sewer Heat Recovery Pilot is a new initiative to make sewer heat — an underused, renewable, carbon-free energy source — available to private property owners within the utility's service area. This is a new tool King County is employing to help lower the region's carbon footprint.

Key Historical Context: Sewer heat recovery technology is well-established. Private property owners in Europe, Canada, and Japan use publicly owned sewer heat recovery to heat and cool privately owned buildings, but this type of public-private agreement for sewer heat recovery has been rare in the U.S. until recently. This relatively simple technology for heating and cooling buildings is achieved through transferring heat energy into or out of sewer lines, depending on the temperature of the sewage relative to the desired temperature of the building. The technology has been in use around the world, and even in King County, for decades.⁴ Since 1988, DNRP's South Treatment Plant in Renton has used heat from treated plant effluent to heat buildings and solids digesters on its campus.^{5,6} This system is currently out of service and is being updated with a newer, more efficient design.

Key Current Context: King County's [Strategic Climate Action Plan](#) (SCAP) emphasizes the importance of assisting the community in lowering carbon emissions. DNRP has been keenly aware of sewer heat recovery as an underused, renewable, carbon-free energy resource currently going to waste. In 2018, King County received new inquiries from private developers interested in sewer heat recovery. Use of this resource by the community further advances King County's SCAP goals. Recognizing this, the 2020

³ A renewable resource is a [natural resource](#) which will replenish to replace the portion [depleted](#) by usage and consumption. Biogas, biosolids, recycled water, and heat energy are examples of byproducts of the wastewater system that are considered renewable resources.

⁴ ["Waste Wattage: Cities Aim to Flush Heat Energy Out of Sewers,"](#) National Geographic, December 11, 2012.

⁵ Treatment plant effluent is the treated wastewater that flows out of a wastewater treatment plant for discharge. South Plant's treated effluent is piped and discharged to Puget Sound.

⁶ The organic solid waste that is removed from wastewater during the treatment process is put in large tanks called digesters. Solid's digesters use bacteria and heat to help break down the organic solid waste into biosolids for use as a nutrient-rich soil amendment for crops and forests in Washington State.

SCAP update, adopted by the County in May 2021, specifically includes implementation of sewer heat recovery as a strategy to reduce fossil fuel use in buildings.⁷

When the Sewer Heat Recovery Pilot was approved by the County in September 2020, DNRP began work to find projects for the pilot, including the steps detailed below:

Finalize design guidelines and application materials.

DNRP created an [application and documents checklist](#) that applicants must submit to the County to be considered for a pilot project. A [Standard Design Guidelines](#) document was created and is available online that advises potential applicants of more detailed expectations for project designs.

Assemble an internal evaluation and implementation team

DNRP identified a multi-disciplinary internal team to review all pilot project designs for any impacts to the wastewater conveyance and treatment system. As the projects are constructed, members of this team will also serve as on-site inspectors. As specified by the user agreement, users reimburse the Water Quality Fund for the cost of staff time to review and implement their designs.

Create website

In October 2020, DNRP published a new [website](#) for the sewer heat recovery pilot, including information explaining how the technology works, information for potential users, and an explanation of how the initiative will advance the goals of the SCAP. As of March 2022, the website has more than 2,800 unique (individual) views and over 3,800 total views since website launch.

The Sewer Heat Recovery Pilot furthers the King County SCAP goal of establishing a healthy environment by reducing countywide greenhouse gas emissions (GHGs) by 50 percent by 2030. The pilot also advances the SCAP goal of replacing fossil fuel energy resources with new, renewable, carbon-free energy sources.

Report Methodology: Information in this report was compiled by DNRP staff.

IV. Report Requirements

This report focuses primarily on the level of interest from potential users since passage of Ordinance 19161 in 2020. Subsequent annual reports will include all elements as required by the Ordinance as pilot projects are constructed and operational.

Ordinance 19161 requires annual reporting on the four specific aspects of the Sewer Heat Recovery Pilot shown below.

- 1. The level of interest demonstrated by potential sewer heat transfer users, which shall include, but not be limited to, inquiries received from potential project developers and the number of applications for participation in the pilot project;*
- 2. Information that establishes the overall sewer heat transfer user costs, which may include, but not be limited to: costs to construct the energy transfer system; costs to construct backup energy systems; operating costs of the sewer heat transfer user and backup energy systems;*

⁷ The [2020 King County Strategic Climate Action Plan](#) includes implementation of sewer heat recovery as part of Strategy GHG 3.4.2 (page 99) which addresses fossil fuel use in buildings.

revenues to the sewer heat transfer user related to using the sewer heat transfer, including tax benefits, renewable energy credits, grants and payments from downstream users; energy usage by the sewer heat transfer user and backup energy systems; and estimated construction and operating costs of comparable energy systems that would have been used instead of a sewer heat transfer;

3. Information regarding the overall sewer heat transfer user's carbon footprint, which may include, but not be limited to: estimated carbon emissions associated with construction of either the energy transfer system or the backup systems, or both; estimated carbon emissions associated with the wastewater sewer heat energy user's overall energy usage, both through a sewer heat transfer and backup energy systems, and estimated carbon emissions associated with comparable energy systems that would have been used instead of a sewer heat transfer; and

4. A cost-benefit analysis for each piloted project, which may include, but not be limited to: costs to the wastewater treatment division associated with each pilot project, as well as a summary of those costs that were or to be reimbursed to the wastewater treatment division by the sewer heat transfer user; the annual energy transfer fee revenues that would have been collected by the wastewater treatment division if the user had not been designated a pilot project; and any impacts to wastewater treatment division's conveyance or treatment system, whether it be physical or operational, or other wastewater treatment programs, either positive or negative, resulting from the sewer heat transfer user's connection and energy transfer system.

1. Level of Interest Demonstrated by Potential Sewer Heat Recovery Users

This section provides a summary of the level of interest demonstrated by potential sewer heat recovery users, as measured by the following: number of website views and number of interested stakeholders listed in response to WTD outreach; inquiries from other utilities; and number of applications received for the pilot.

Outreach

In November 2020, DNRP issued a [press release](#) that advertised a call for pilot projects. Since launching the program, DNRP staff has presented at three webinars, in partnership with the [Seattle 2030 District](#)⁸ and the [Smart Buildings Center](#), that were specifically aimed at educating potential local users of the sewer heat recovery process and opportunity to apply to the pilot program.⁹ In spring 2022, DNRP began work with the [Clean Tech Alliance](#), as part of the organization's Washington Department of Commerce grant-funded initiative to identify and overcome barriers to decarbonizing the built environment.¹⁰ The Clean Tech Alliance has identified sewer heat recovery as a target area for growth in the clean technology sector, and has formed a working group of public and private partners to promote increased use of the technology. DNRP staff is serving on this working group.¹¹

⁸ The [Seattle 2030 District](#) bridges the gap between private and public sector to reduce the environmental impacts of buildings in Seattle.

⁹ The [Smart Buildings Center](#) is a project collaboration with [Northwest Energy Efficiency Council](#) which promotes energy efficiency policies, programs and technologies that create jobs and foster economic growth and environmental improvement.

¹⁰ The [Clean Tech Alliance](#) facilitates generation and growth of the cleantech sector through a variety of educational programs, research, products, and services.

¹¹ The Clean Tech Alliance uses the term "wastewater energy transfer" or "W.E.T.," which is synonymous with "sewer heat recovery."

DNRP estimates that there are approximately 100 names on the stakeholder list, which includes individuals who have expressed interest in the sewer heat recovery pilot in any capacity, not just as potential users. Table 1 shows how many individuals have viewed the website.

Table 1. Sewer Heat Recovery Website Annual Page Views, April 2021 – March 2022^{12,13}

Webpage	Total Page Views	Unique Page Views
Top page for sewer heat recovery	1,533	1,190
Potential Users tab	714	544
How It Works tab	833	719
Confronting Climate Change tab	401	373

Response to inquiries

One unexpected outcome was the high number of responses from other jurisdictions across the U.S. and Canada expressing interest in using King County’s experience to inform their path to implementing a sewer heat recovery program at their wastewater treatment utilities. Since launching the program, DNRP staff responded to questions from utilities, and presented to interested parties in California, Colorado, Wisconsin, and Massachusetts, as well as to Canadian parties in Vancouver, British Columbia, and Toronto, Ontario. Closer to home, in early 2022, DNRP staff presented to City of Seattle staff interested in learning more about the initiative.

Pandemic-related commercial real estate volatility has been a challenge for this pilot. In conversations with DNRP staff, developers have noted that they are rethinking capital investments, including implementing sewer heat recovery, due to rapid changes in office use and difficulty in predicting the future of commercial real estate.

Call for pilot projects

DNRP designed an initial call for pilot projects with a two-month window for application submittal at the end of 2020. Because not all slots in the pilot program were filled after the initial call for projects, DNRP has been accepting applications on a first come, first served basis since that time.

Evaluation

DNRP staff has received three applications to date, and ultimately signed one user agreement with one of those projects. Two of the applicants ultimately decided that sewer heat recovery was not a good fit for their specific project constraints and withdrew their applications. Table 2 summarizes the three applications received.

Table 2. Summary of Three Applications Received for the Sewer Heat Recovery Pilot since Program Launch in December 2020

¹² Total page views versus unique page views make it possible to distinguish between the number of users (unique) and repeat visits to the web page from the same users (total).

¹³ These numbers represent a 12-month view from April 2021-March 2022. The numbers from site launch to reporting, which is a total of 18 months. Numbers reported in last year’s report represented a six-month snapshot, so will not provide a fair basis for comparison to the current 12-month numbers. In 2023 this website will have completed a two-year cycle, so percentage change comparison over last 12-month period will be reported on in 2023.

Location	Project summary	Interceptor connection	Status
South Lake Union	New construction: -1,200,000 sq. ft. -multi-building energy district -commercial (office and laboratory) spaces	Central Trunk	Designated pilot project. Final agreement signed (2021). Construction on the sewer heat recovery system planned to begin July 2022.
Belltown	Retrofit: -378,876 sq. ft. -multi-building energy district with potential to expand if new construction occurs -commercial buildings; possible future expansion would be residential	Elliott Bay Interceptor	Extended invitation to join pilot program. Project applicant withdrew application in late 2021 due to a change in building owner's business plan and priorities, unrelated to sewer heat recovery.
Denny Triangle	New construction: -commercial and residential	Central Trunk	Project applicant withdrew application in early 2021 shortly after applying due to building owner deciding sewer heat recovery was not a good fit due to location and project parameters.

2. Overall Sewer Heat Transfer User Costs

This information is not yet available, as no sewer heat recovery users have begun construction at this time. As stated above, information for this section will be provided in future reports after pilot projects are constructed and are operating.

3. Overall Sewer Heat Transfer User Carbon Footprint

This information is not yet available. As stated above, information for this section will be provided in future reports after pilot projects are constructed and are operating.

4. Cost-Benefit Analysis for Each Pilot Project

This information is not yet available. As stated above, information for this section will be provided in future reports after pilot projects are constructed and are operating.

V. Conclusion/Next Steps

Two pilot project slots remain open, and applications will be considered on a first-come, first-served basis. The [sewer heat recovery website](#) has been updated to reflect this status. Despite volatility in the commercial real estate market due to the Covid-19 pandemic, interest in the program remains high. Based on ongoing levels of interest from several potential users, DNRP is optimistic that one or more applications will be submitted for the remaining slots.

The amount of information available for this annual report will increase incrementally as projects are designated, designed, and constructed.

VI. Appendices

Appendix A: King County Ordinance 19161



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

Ordinance 19161

Proposed No. 2020-0210.3

Sponsors Dembowski and Kohl-Welles

1 AN ORDINANCE relating to the sale of heat energy
 2 transferred to or from the King County wastewater
 3 treatment system and authorizing the King County
 4 executive to enter into up to three agreements for such
 5 sewage heat recovery projects.

6 STATEMENT OF FACTS:

7 1. Wastewater contains heat energy as it flows through pipelines to the
 8 treatment plant, and can be both a source of heat for buildings and a sink
 9 for unwanted heat from buildings.

10 2. Warm and hot wastewater flushed from homes and businesses is a
 11 significant source of energy. One estimate is that Americans flush three
 12 hundred fifty billion kilowatt-hours of energy into the sewers each year,
 13 roughly enough to power thirty million U.S. homes.

14 3. Recovery of heat energy from wastewater is consistent with the
 15 wastewater treatment division's mission to recover resources from
 16 wastewater.

17 4. Use of this renewable heat energy reduces use of fossil fuels for
 18 heating and cooling, contributing to efforts to reduce the region's carbon
 19 footprint, consistent with King County's Strategic Climate Action Plan,

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20 and supports countywide greenhouse gas emissions reduction targets
21 adopted as Countywide Planning Policies by the King County Growth
22 Management Planning Council in 2014.

23 5. Sewer heat transfer is an established technology in other countries,
24 including Canada, and is a developing market in the United States with
25 interest from private property owners in King County as a potential
26 solution for delivering cost-efficient, environmentally responsible heating
27 and cooling in buildings.

28 6. Sale of this previously unused heat energy resource provides an
29 opportunity to generate modest but new funding, which can be used to
30 further carbon emission reduction projects within the wastewater treatment
31 division.

32 7. The unique nature and complexity of determining if, when and where a
33 sewer heat transfer might be a useable energy option for a given user
34 demonstrates that sewer heat does not lend itself to a sale to the highest
35 responsible bidder at public auction or by sealed bid. Under such unique
36 circumstances, K.C.C. chapter 4.56 authorizes the county to negotiate a
37 sale directly with a person or entity.

38 8. The sale of sewer heat transfers, based on the terms and conditions set
39 forth in the attached agreement, will provide a public benefit by generating
40 revenue. Such sales are in the overall best interests of the public.

41 9. To ensure compliance with the state constitution and state law
42 provisions prohibiting the use of wastewater revenue or assets for private

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43 purposes, the county will require payment to the county for county staff
44 and administrative costs associated with evaluating a proposed sewer heat
45 transfer project, even if the project developer does not enter into a sewer
46 heat transfer agreement with the county or proceed with the project.

47 10. The market for the sale of this county resource is in its nascent stage.
48 Therefore, the appropriate pricing for this resource must be developed by
49 real world experience. The agreement, in the form of Attachment A to
50 this ordinance, will be used for up to three pilot projects whereby the
51 county may waive the annual access fee for up to three years in exchange
52 for information from the sewer heat transfer user by which the county can
53 more accurately develop a pricing strategy for potential future sewer heat
54 transfer agreements. Allowing for a limited number of pilot projects
55 wherein private sewer heat transfer users would not be charged an annual
56 access fee for a short period of time in exchange for sharing revenue and
57 expense data with the county, would allow King County to better assess
58 feasibility of the technology and the reasonableness of the annual access
59 fee charged for sewer heat energy transfer.

60 11. "Sewer heat transfer user" is synonymous with the term "a wastewater
61 thermal energy user" as used in the agreement.

62 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

63 SECTION 1. Findings: The King County council hereby finds under K.C.C.
64 4.56.100.A.2. that unique circumstances exist to support the executive's testing of
65 negotiated direct sale of sewer heat energy transferred to or from the pipelines as

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66 wastewater is conveyed to the treatment plant, and, except as provided in section 4.C. of
67 this ordinance, that it is in the best interest of the public to limit the number of negotiated
68 direct sale agreements to three in order that the county be able to determine the
69 appropriate pricing for this county resource.

70 SECTION 2. The King County executive is hereby authorized to designate up to
71 three private sewer heat transfer projects that have demonstrated readiness to move
72 forward by meeting a thirty percent design threshold or similar milestone of the overall
73 design of the construction project, including the sewage heat transfer component of the
74 construction project, and to enter into an agreement, substantially in the form of
75 Attachment A to this ordinance, with each project developer for the sale of heat energy
76 transferred to or from the pipelines as wastewater is conveyed to the treatment plant, in
77 accordance with the agreement. To be considered as a pilot project, the entity signing the
78 agreement on its behalf and behalf of its successors in interest shall be required to share
79 data on its usage, revenue and expenditures with the county for at least three years.

80 SECTION 3. Moneys from the sale of sewer heat transfers and any
81 environmental attributes shall be allocated to the wastewater treatment division. The
82 revenue from sewer heat transfers shall be used to further the goals outlined in the King
83 County Strategic Climate Action Plan relating to the operations and capital improvement
84 program of the wastewater treatment division. Revenue beyond that needed for such
85 purposes may be spent on rate stabilization.

86 SECTION 4. A. The wastewater treatment division shall prepare an annual
87 report describing the benefits demonstrated, as well as any operational or capital
88 challenges encountered, associated with the implementation of the pilot project. Among

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89 the elements to be addressed in the report shall be:

90 1. The level of interest demonstrated by potential sewer heat transfer users,
91 which shall include, but not be limited to, inquiries received from potential project
92 developers and the number of applications for participation in the pilot project;

93 2. Information that establishes the overall sewer heat transfer user costs, which
94 may include, but not be limited to: costs to construct the energy transfer system; costs to
95 construct backup energy systems; operating costs of the sewer heat transfer user and
96 backup energy systems; revenues to the sewer heat transfer user related to using the
97 sewer heat transfer, including tax benefits, renewable energy credits, grants and payments
98 from downstream users; energy usage by the sewer heat transfer user and backup energy
99 systems; and estimated construction and operating costs of comparable energy systems
100 that would have been used instead of a sewer heat transfer;

101 3. Information regarding the overall sewer heat transfer user's carbon footprint,
102 which may include, but not be limited to: estimated carbon emissions associated with
103 construction of either the energy transfer system or the backup systems, or both;
104 estimated carbon emissions associated with the wastewater sewer heat energy user's
105 overall energy usage, both through a sewer heat transfer and backup energy systems, and
106 estimated carbon emissions associated with comparable energy systems that would have
107 been used instead of a sewer heat transfer; and

108 4. A cost-benefit analysis for each piloted project, which may include, but not
109 be limited to: costs to the wastewater treatment division associated with each pilot
110 project, as well as a summary of those costs that were or to be reimbursed to the
111 wastewater treatment division by the sewer heat transfer user; the annual energy transfer

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112 fee revenues that would have been collected by the wastewater treatment division if the
113 user had not been designated a pilot project; and any impacts to wastewater treatment
114 division's conveyance or treatment system, whether it be physical or operational, or other
115 wastewater treatment programs, either positive or negative, resulting from the sewer heat
116 transfer user's connection and energy transfer system.

117 B. The report required by this section shall be transmitted by the executive by
118 June 1 of each year for ten years or until one year after the last pilot project has provided
119 the wastewater treatment division the data required under section 2 of this ordinance,
120 whichever is sooner. The executive shall transmit the report required by this section in
121 the form of a paper original and an electronic copy the clerk of the council, who shall
122 retain the original and provide the electronic copy to all councilmembers, the council
123 chief of staff and the lead staff for the mobility and environment committee or its
124 successor.

125 C. The wastewater treatment division may transmit an ordinance requesting
126 approval to enter into agreements for an additional project or projects, but only if either
127 there is sufficient developer interest or there is a project that would provide useful
128 information because it is a different type of development than any of the three pilot
129 projects, or there are both. The proposed ordinance shall be accompanied by a summary
130 of the data received to date from the pilot projects under subsection 4.A. of this section to

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131 inform the council's adoption of ordinances authorizing the executive to enter into
132 additional agreements for the direct sale of sewer heat energy transferred to or from the
133 pipelines as wastewater is conveyed to the treatment plant.
134

Ordinance 19161 was introduced on 6/23/2020 and passed as amended by the Metropolitan King County Council on 9/15/2020, by the following vote:

Yes: 9 - Ms. Balducci, Mr. Dembowski, Mr. Dunn, Ms. Kohl-Welles, Ms. Lambert, Mr. McDermott, Mr. Upthegrove, Mr. von Reichbauer and Mr. Zahilay

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

DocuSigned by:
Claudia Balducci
F8830816F1C4427...

Claudia Balducci, Chair

ATTEST:

DocuSigned by:
Melani Pedroza
8DE1BB375AD3422...

Melani Pedroza, Clerk of the Council

APPROVED this ____ day of 9/25/2020, ____.

DocuSigned by:
Dow Constantine
4FBCAB8196AE4C6...

Dow Constantine, County Executive

Attachments: A. Agreement for Sale and Use of Thermal Energy from King County Wastewater, dated September 9, 2020, revised 9/15/20

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

This Agreement (“Agreement”) is made as of the _____ day of _____, 20__ between _____, a (describe type of legal entity) 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 construct a (describe type of structure or neighborhood or district energy system) at (describe address and/or location(s)), hereinafter referred to as the “Project;” and

WHEREAS, Wastewater Thermal Energy User proposes to construct (describe proposal: e.g. a closed loop parallel or similar connection to the County’s) (name County facility where connection will be made) _____ for the purpose of transferring heat energy to or from the County’s wastewater; 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 (describe building, neighborhood or district) 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 (describe building, neighborhood or district) 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. 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.

1.6. 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:

1.6.1. 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);

1.6.2. 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));

1.6.3. Changes in Law;

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

1.6.5. 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.

1.7. Initial Authorized User means the first 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.

1.8. 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.

1.9. 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.

1.10. Thermal Use Area means the geographic area (or facilities or basin or alignment) designated in this Agreement by King County in its sole and absolute discretion and judgment and 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.

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 XX anniversary of the Commercial Operation Date, but which in no case shall exceed thirty years.

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:

<u>Milestone</u>	<u>Milestone Date</u>
Filing date for required Project Permits	
Filing date for County (WTD) Connection Approval	
Completion of Non-WTD Permit Acquisitions	
Construction Start date	
Deadline for Commercial Operation Date	

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 (describe Thermal Use Area for this Agreement).

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 sole 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 Initial Authorized User. Before the County makes its determination, the County will seek input from Initial Authorized 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 connect to the _____ [Location], as depicted in Exhibit ___, 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 the 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 proposed connection(s) shall take place.

4.2.2. Within ____ days of the Effective Date, the Wastewater Thermal Energy User shall provide the County with a 30% design packet, depicting Wastewater Thermal Energy User's design of the Connection including without limitation, Wastewater Thermal Energy User's specifications, drawings and design assumptions for County review and comment. The County shall have thirty (30) days from receipt of the 30% design packet to review and provide comments to Wastewater Thermal Energy User.

4.2.3. Within ____ days of the Effective Date, Wastewater Thermal Energy User shall provide the County with a 60% design packet, depicting Wastewater Thermal Energy User's design of the Connection including without limitation, responses to County's 30% review comments. The County shall have thirty (30) days from receipt of the 60% design packet to review and provide comments to Wastewater Thermal Energy User.

4.2.4. Within ____ days of the Effective Date, Wastewater Thermal Energy User shall provide the County with a 90% design packet, depicting Wastewater Thermal Energy User's design of the Connection including without limitation, responses to County's 60% review comments.

4.2.5. Within __ days of the Effective Date, Wastewater Thermal Energy User shall submit to the County for its review and approval or denial, the final design for the Connection including all specifications, special provisions, technical requirements, and technical specifications, necessary to construct the work. Comments from the County on the 90% design shall be resolved to the County's satisfaction. The County shall have thirty (30) days from receipt of the proposed final design packet to review and comment. At the end of the thirty days, the County shall approve or deny the Connection. If approved, the final design shall be referred to as the "Approved Final Design."

4.2.6. Prior to approval of any permit application for 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 the Connection and Project and to obtain all necessary permits and approvals for the Connection and Project.

4.4. Flow Volume and Temperature. The County does not warrant, guarantee or make any representation as to the temperature or flow volume of the wastewater conveyed to the Connection.

4.5. County Contact. The County shall designate a Resource Recovery Project Manager who shall serve as Wastewater Thermal Energy User's point of contact with the County; provide limited technical assistance in the energy, wastewater and technology assessment fields; and maintain communications with Wastewater Thermal Energy User.

5. Wastewater Thermal Energy User Responsibilities for Design, Construction and Operation of Connection

5.1. Wastewater Thermal Energy User shall comply with all applicable laws and regulations with respect to the construction, operation and oversight of the Connection and Project. [If applicable]: The Project will be a private Investor Owned Utility (IOU) and therefore subject to local, state and federal laws related to the governance and oversight of IOUs.]

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 [or the Connection, Project or IOU] 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 design, construct, install and 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 design, installation and operation of the Connection and Project, including the use of a public right of way or other public property.

5.3. Responsibility for Construction of Connection. Wastewater Thermal Energy User shall allow the County access to its construction site necessary to inspect the Connection during construction. Wastewater Thermal Energy User shall obtain written approval and acceptance from the County for the Connection prior to backfill. Wastewater Thermal Energy User shall be solely responsible for designing, constructing and installing all equipment, pipes, conduits and related facilities required for and shall bear all costs and expenses incurred in and for the Connection and with bringing its facilities to the Connection.

5.4. Coordination of Design. Wastewater Thermal Energy User's Connection to the County's [specify County facility: e.g. sewer main] shall be consistent with the Approved Final Design approved in writing by the County that will allow the temporary diversion and return of wastewater to allow for the transfer of heat to or from the wastewater conveyance.

5.5. Coordination of Construction of Connection. If the County approves the final design of the Connection, then the Wastewater Thermal Energy User shall coordinate construction activity for the Connection with the County's designated local public agency coordinator in order to minimize any impacts of such work to the County and the County's wastewater treatment system. The County and Wastewater Thermal Energy User agree to meet within thirty (30) days from the date of the County's approval of the final design to discuss the schedule for construction of the Connection. Wastewater Thermal Energy User shall construct the Connection only on the date(s) and during the hours approved in writing by the County. For the operational needs of the County's wastewater system, the County may require Wastewater Thermal Energy User to construct the Connection during a specified period such as during a planned improvement or maintenance activity affecting County's conveyance system.

To the maximum extent allowed under the law, the County shall not be responsible under any circumstances for any claims, charges, costs, change orders, damages or penalties imposed upon or incurred by Wastewater Thermal Energy User or any of its contractors, subcontractors, material suppliers or agents, associated with any delay, inconvenience, disruption of schedule, impacts, loss of efficiency or productivity and/or any other costs or damages or any other expense as a result of any delay to the construction of the Connection or Project.

5.5.1. Obligation to Diligently Pursue Permits. Wastewater Thermal Energy User is responsible for timely obtaining all required permits and approvals. Wastewater Thermal Energy User shall use its best efforts to diligently pursue permitting and construction of the Project and Connection by the Milestone Dates set forth in Section 2. Wastewater Thermal Energy User's failure to obtain permitting and/or to commence construction by the Milestone Dates set forth in Section 2 may, in the County's discretion, be grounds for the County to terminate the Agreement for default under section 11.1.

5.5.2. Prior to construction of the Connection, Wastewater Thermal Energy User shall have been granted all required permits, including a street use permit and any other permits or approvals from all applicable government bodies necessary for the construction of the Connection, either unconditionally or subject to conditions that do not materially prejudice its rights, the enjoyment of its benefits or the performance of its obligations under this Agreement and each such required permit or approval shall be in full force and effect and any appeal period shall have been expired or appeals exhausted.

5.5.3. No changes may be made to the Approved Final Design without the express written consent of the County. Before or during construction, if Wastewater Thermal Energy User requests a change to the Approved Final Design, Wastewater Thermal Energy User shall 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. County shall have five (5) business days to review the information submitted and decide, in its sole judgment and discretion, whether to approve, modify or deny the requested change.

5.6. Wastewater Thermal Energy User shall be responsible for repairing any damage to County property resulting from Wastewater Thermal Energy User's activities.

5.7. After Approved Final Design, the County may require additions and changes to the Connection if in its sole determination such additions or changes are necessary for the County to meet its maintenance, operational and/or permit goals and requirements.

5.8. Wastewater Thermal Energy User will notify County upon completion of the construction of the Connection and will invite County to participate in a pre-final inspection of the completed work.

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

5.10. 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 facilities.

5.11. The County shall not be responsible or obligated for any costs, change orders or delays associated with the construction of the Connection or the Project.

5.12. 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.

5.13. Wastewater Thermal Energy User shall, at its sole cost and expense, design, construct, administer, operate, maintain, repair and replace the Connection and the Project, including but not limited to the loop parallel pipe or similar technology, and any associated equipment necessary for the heat energy transfer process.

5.14. Wastewater Thermal Energy User shall reimburse County for any and all costs and expenses, of any nature whatsoever, including, but not limited to County staff time, and invoices from contracted consultants, if any, associated with the design, construction, operation, maintenance, repair and/or replacement of the Connection. Prior to its submission of an application for a Connection approval, the prospective Wastewater Thermal Energy User shall submit a statement of intent to apply for a Connection 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.

5.15. Wastewater Thermal Energy User shall own the pipe and equipment up to the point of connection with the County's [name County facility] and all facilities and equipment located on the Project site. 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 [Name facility], the wastewater conveyed therein and/or the County's Wastewater Treatment System.

5.16. Wastewater Thermal Energy User shall not discharge any wastewater that originates in or from its (specify: building(s) or structure(s), etc.), for the purpose of wastewater treatment, to the County's regional wastewater system via the Wastewater Thermal Energy User's connection.

5.17. Wastewater Thermal Energy User shall permit the County to install meters, sensors and communication equipment on User's equipment, 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.

5.18. Wastewater Thermal Energy User shall require in all contracts to construct any connections between the Project and County facilities as well as all Energy Transfer Stations the 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 such connections and Energy Transfer Stations.

6. Operation and Maintenance of WTD Facilities

6.1. The Parties agree that the primary responsibility of County is to operate the [Name Facility] 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 [Name Facility] or Wastewater Treatment System operations or facilities.

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.

6.3. COUNTY MAKES NO WARRANTIES AS TO THE QUALITY OR QUANTITY OF WASTEWATER/SEWAGE AVAILABLE IN THE COUNTY'S [NAME COUNTY FACILITY] 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 Name County Facility and/or the Wastewater Treatment System that would reduce the quantity of wastewater in the [Name County Facility] 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 [Name County Facility] and/or the Wastewater Treatment System that would reduce the quantity of wastewater in the [Name County Facility] in the vicinity of the Connection, the County shall endeavor to provide oral notice thereof to Wastewater Thermal Energy User.

6.5. The Wastewater Thermal Energy User shall be responsible for the maintenance and operation of the Connection. COUNTY SHALL NOT BE LIABLE FOR ANY FAULT OR FAILURE OF THE [NAME COUNTY FACILITY] 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 impacts to the Connection or Project.

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 on (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 Commercial Operation 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 (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 Commercial Operation Date at the end of year two of the Term, the amount payable shall be .005 per ton-hour x 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 x 1.025 x the ton-hours from year three.

7.2. [IF PART OF NEGOTIATIONS THE WTEU DOES NOT REQUIRE WAIVER OF FEE IN EXCHANGE OF INFO THEN THIS PARAGRAPH 7.2 IS REMOVED] Notwithstanding Section 7.1, the County agrees to waive the Annual Access Fee for the first ____ years [up to a maximum of 3 years] in exchange for the Wastewater Thermal Energy User providing access to the information required in section 9.2

7.3 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.

7.4. 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 [Describe type of legal entity] duly organized, validly existing and in good standing under the laws of the State of _____, 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.

8.2.2. 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.

8.2.3. 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.

8.2.4. 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 five (5) 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. Wastewater Thermal Energy User shall retain all of its books and records for six (6) years following the creation thereof or for such longer period as may be required by applicable federal, state or local law; provided that all records that are necessary to demonstrate eligibility for tax credits, if applicable, shall be retained for ten (10) years following the creation thereof or such longer period as may be required by applicable law.

9.2. In addition to the records the Wastewater Thermal Energy User is required to maintain and make available to the County in accordance with other provisions of this Section 9, for a period of XX years [must be for a minimum of 3 years] from the Commencement Date, the Wastewater Thermal Energy User shall maintain and make available to the County information, including written or electronic records, to establish the following:

- a. costs to construct the energy transfer system
- b. costs to construct the backup energy systems
- c. operating costs of the Wastewater Thermal Energy User's s sewer heat recovery and backup energy systems
- d. energy usage by the Wastewater Thermal Energy User's sewer heat recovery and backup energy systems.
- e. costs of comparable energy systems that would have been used instead of sewer heat
- f. tax benefits, grants, renewable energy credits, or similar funding received by Wastewater Thermal Energy User.

Within five (5) 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.

9.3 In addition to the records the Wastewater Thermal Energy User is required to maintain and make available to the County in accordance with other provisions of this Section., for a period of XX years [must be for a minimum of 3 years] from the Commencement Date, the Wastewater Thermal Energy User shall maintain and make available to the County information, including written or electronic records, that documents the revenues generated by the construction or use of the sewer heat recovery and backup energy systems, including payments received from or charges to the users of the systems.

9.4. 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 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 three (3) 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. 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. The County may terminate this Agreement 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. In such case the County shall provide not less than thirty (30) days written notice to the Wastewater Thermal Energy User 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 terminates or suspends the design, permitting, construction or operation of the Connection or the Project, which continues for a period of sixty (60) days in any ninety (90) day period, without notice to, and the consent of, County. In order to assist County in determining whether Wastewater Thermal Energy User has terminated or suspended its efforts to design, obtain permits, construct and/or operate the Connection and/or the Project, Wastewater Thermal Energy User shall, within ten (10) days of County's request, provide to County any and all information and documentation requested by County to substantiate that the Project has not been suspended or terminated. County's determination as to whether Wastewater Thermal Energy User has terminated or suspended its efforts to design, obtain permits, construct and/or operate the Connection and/or the Project shall be in the County's sole discretion and judgment and such determination shall be final. Failure by Wastewater Thermal Energy User to provide any of the information requested by County shall be a separate event of default.

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 without King County's prior written approval, not to be unreasonably withheld.

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 default that is not cured within the applicable period (if any) for cure, or a termination event 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 11.3.1, 11.3.2 or 11.3.3. The Agreement may be terminated by a Termination Notice based upon a default of Section 11.3.1, 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), (6) if given by facsimile transmission (provided the fax machine has printed 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, the County shall have the right, but not the obligation, to remove from its premises the Connection and all equipment, pipes, conduits and related facilities 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 Wastewater Thermal Energy User

shall use reasonable care and remove from the Connection site, the Connection and all equipment, pipes, conduits and related facilities 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 at termination, 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.

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, caused by or arising out of Wastewater Thermal Energy User's acts, errors or omissions in the performance of this Agreement, arising by reason of Wastewater Thermal Energy User's design, construction, operation and maintenance of the Connection and/or the Project [If applicable: and/or participation in a Neighborhood District Energy Project].

12.2. The Wastewater Thermal Energy User's obligations under this section shall include, but not be limited to:

12.2.1. The duty to promptly accept tender of defense and provide defense to the County at Wastewater Thermal Energy User's own expense;

12.2.2. The duty to indemnify and defend the County from any claim, demand and/or cause of action brought by or on behalf of any of Wastewater Thermal Energy User's employees or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of Wastewater Thermal Energy User's immunity under Washington's Industrial Insurance Act, RCW Title 51, as to the County, in order to provide the County with a full and complete indemnity and defense of claims made by Wastewater Thermal Energy User'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.

12.2.3. To the maximum extent permitted by law, Wastewater Thermal Energy User shall indemnify and defend the County from and be liable for all damages and injury which shall be caused to owners of property on or in the vicinity of the Project which shall occur to any person or persons or property whatsoever arising out of the performance of this Agreement and/or the design, construction, maintenance or operation of the Project and/or the Connection, whether or not such injury or damage is caused by the negligence of the Wastewater Thermal Energy User or caused by the inherent nature of the Project or the Connection.

13. Insurance

A. 13.1. Prior to commencement of construction of the Project and Connection, and 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.

B. 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. \$5,000,000 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.

13.1.5. Contractor’s Pollution Liability. Contractor’s Pollution Liability coverage in the amount of \$2,000,000 per occurrence or claim and in the aggregate to cover sudden and non-sudden bodily injury and/or property damage to include the destruction of tangible property, loss of use, cleanup costs and the loss of use of tangible property that has not been physically injured or destroyed. If Asbestos, Lead or PCB’s are a potential exposure, such insurance shall not exclude pollution arising out of Asbestos, Lead and/or PCB operations.

13.1.6. Pollution Liability (OPA, CERCLA). \$1,000,000 and statutory limits of liability as applicable.

13.1.7. Professional Liability Errors and Omissions. \$5,000,000 per claim and in the aggregate. In the event that services delivered pursuant to this Agreement either directly or indirectly involve or require Professional services, Professional Liability Errors and Omissions shall be provided prior to Agreement execution.

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 except Professional Liability 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.

13.6. The Indemnity and Insurance provisions set forth in this Agreement shall survive the termination of this Agreement for any reason.

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 toxic or hazardous substances, wastes or 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. Wastewater Thermal Energy User shall immediately notify the County of any and all spills or releases of any toxic or hazardous substances, wastes, or materials, all failures to comply with any federal, state, or local law, regulation or ordinance, all inspections of the Connection 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 toxic or hazardous substances in or about the Connection, the Project site or County property. 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 use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of toxic or hazardous substances, 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. 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.

14.5. For the purposes of this section, "toxic or hazardous substances, wastes and materials" or "toxic substance" 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). “Toxic or hazardous substances, wastes and 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. Any notice required to be given by either Party to the other pursuant to provisions of this Agreement or any law, present or future, shall be in writing and shall be deemed to have been duly given or sent if either delivered personally, sent by nationally recognized overnight delivery service or sent via United States Mail addressed to the following:

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

WITH A COPY TO:

King County Prosecutor's Office
King County Administration Building
500 Fourth Avenue, 9th Floor
Seattle, WA 98104
Attn: Verna P. Bromley
Sr. Deputy Prosecuting Attorney
Fax: (206) 296-0415

Address

With a Copy to:

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.

Except as otherwise provided, notices may also be given by electronic means, if agreed to in writing by the Parties. 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 in its sole discretion and judgment. The Agreement is entered into solely for the mutual benefit of the Parties.

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 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 18.9.2

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. Such confidential records shall not be subject to chapter 42.56 RCW if the Wastewater Thermal Energy User specifically states in writing the reasons why protection is necessary, and identifies the data or materials to be protected.. 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.

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 copies) 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:

Title:

By: _____

Name:

Title: