

**INTERLOCAL AGREEMENT
FOR FIRE PROTECTION, EMERGENCY MEDICAL AND RELATED
SERVICES TO THE BRIGHTWATER TREATMENT PLANT**

THIS INTERLOCAL AGREEMENT (Agreement) is made by and between King County, a home rule charter county, a political subdivision of the State of Washington, hereinafter referred to as the "County", and the Snohomish County Fire Protection District No. 7, a municipal corporation of the State of Washington, hereinafter referred to as the "District." County and District may also be collectively referred to as the "Parties" and individually as "Party."

WHEREAS this Agreement is entered into by the County and District pursuant to the authority of RCW 52.30.020 and Chapter 39.34, RCW; and

WHEREAS, the District currently provides fire protection, hazardous material response, technical rescue and emergency medical services to the Brightwater Regional Wastewater Treatment Plant (Brightwater Treatment Plant); and

WHEREAS on July 8, 2011, the District filed a Claim for Damages against the County alleging that the District has provided fire protection and medical services to the Brightwater Treatment Plant since 2007 and that the County is obligated to pay for the value of those services and to enter into an Agreement for the continued provision of those services (the "District's Claim for Damages"); and

WHEREAS the County denies the allegations set forth in the District's Claim for Damages and does not admit any liability; and

WHEREAS the County and District understand and acknowledge that the Parties enter into this Agreement, in part, as a compromise settlement of disputed claims and that the furnishing of the consideration for this Agreement shall not be deemed or construed as an admission of liability by either of the Parties; and

WHEREAS, the Parties have negotiated this Agreement in good faith.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the Parties agree as follows:

1. Purpose of Agreement

This Agreement establishes the services to be provided by the District and the payments to be made by the County for the District to provide all fire related services, including but not limited to, fire protection, hazardous material response, technical rescue, emergency medical services and related services to the Brightwater Treatment Plant.

2. Duration of Agreement

2.1 This Agreement shall commence on the date that this Agreement is executed by authorized representatives of both Parties (the "Commencement Date") and end on December 31, 2018 (the "Expiration Date"), unless earlier terminated in accordance with the terms and conditions contained herein. This period shall be referred to as the "Initial Term." Upon expiration of the Initial Term, the Parties may, upon mutual agreement, renew the Agreement for up to three successive five (5) year terms (the "Renewal Terms") on the same terms and conditions set as forth herein. However for each Renewal Term, the Parties shall adjust the Cost of Service based upon the methodology set forth in Exhibit A or upon a different methodology mutually agreed to by the Parties.

2.2 Renewal. The Parties agree that at least six (6) months prior to the Expiration Date of the Initial Term, the Parties will meet to discuss the renewal of this Agreement. If both Parties agree to renew the Agreement then the Parties will reassess and determine the Cost of Service as described in Section 5 herein based upon the methodology set forth in Exhibit A, which Exhibit is incorporated herein by this reference, or upon a different methodology mutually agreed to by the Parties. The Parties agree that at least six (6) months prior to the expiration of the first Renewal Term, the Parties will meet to discuss the renewal of this Agreement for a second Renewal Term. If both Parties agree to renew the Agreement for a second Renewal Term, then the Parties will reassess and determine the Cost of Service as described in Section 5 herein based upon the methodology set forth in Exhibit A or upon a different methodology mutually agreed to by the Parties. The Parties agree that at least six (6) months prior to the expiration of the second Renewal Term, the Parties will meet to discuss the renewal of this Agreement for a third Renewal Term. If both Parties agree to renew the Agreement for a third Renewal Term, then the Parties will reassess and determine the Cost of Service as described in Section 5 based upon the methodology set forth in Exhibit A or upon a different methodology mutually agreed to by the Parties.

3. Termination

3.1 Termination as a Matter of Right. Either Party may give notice of termination of this Agreement for any reason or no reason by providing the other Party with at least one (1) year written notice of its intent to terminate. If this Agreement is terminated by the County, then the County shall provide the District with the name of its new service provider.

3.2 Breach and Termination for Cause. A "Material Breach" shall be defined as either (1) the District's failure to provide services at the level specified in Section 4 and Exhibit B, which Exhibit is incorporated herein by this reference; (2) the County's failure to pay the contract payments specified in Section 5; or 3) any other failure of a Party to perform an obligation required

by this Agreement. Either Party may terminate this Agreement in the event of a Material Breach of this Agreement by the other Party; provided, however, that the non-breaching Party shall provide the breaching Party with written notice which sets forth the alleged Material Breach(es) and states a reasonable time to cure the breach (not to exceed sixty (60) days), the "Cure period." In the event that the breaching Party fails to cure such Material Breaches during the Cure Period, then this Agreement shall automatically terminate without further action.

- 3.3 Upon the effective date of the termination, the County shall not be obligated to make any additional payments to the District.

4. Services Provided

During the term of this Agreement, the District agrees to provide the County with all services as set forth below to the Brightwater Treatment Plant.

- 4.1 Fire Suppression Services. The District shall provide all services necessary for fire suppression, hazardous material response, and rescue in accordance with attached Exhibit B Performance Standards and Level of Service.
- 4.2 Emergency Medical Services. The District shall provide the County with all services necessary for basic and advanced life support, emergency medical service, to the Brightwater Treatment Plant as more particularly described in attached Exhibit B Performance Standards and Level of Service.

5. Cost of Services and Payments

In consideration of the services provided by the District, beginning in the year 2013, the County shall pay to the District each year on or before April 30 one lump sum payment in the amount of \$85,720 as the Cost of Service for that year. This amount shall remain fixed and constant throughout the Initial Term of this Agreement. If both Parties agree to renew the Agreement for an additional five (5) year term, then the Parties will reassess and determine the Cost of Service for this first Renewal Term based upon the methodology set forth in Exhibit A or upon a different methodology mutually agreed to by the Parties. The amount calculated shall be referred to as the Cost of Service for the first Renewal Term. If both Parties agree to renew the Agreement for a second Renewal Term, then the Parties will reassess and determine the Cost of Service based upon the methodology set forth in Exhibit A or upon a different methodology mutually agreed to by the Parties. The amount calculated shall be referred to as the Cost of Service for the second Renewal Term. The Parties agree that at least six (6) months prior to the expiration of the second Renewal Term, the Parties will meet to discuss the renewal of this Agreement for a third Renewal Term. If both Parties agree to renew the Agreement for a third Renewal Term, then the Parties will reassess and determine the Cost of Service based upon the methodology set forth in Exhibit A or upon a different methodology mutually agreed to by the Parties. The amount calculated shall be referred to as the Cost of Service for the third Renewal Term.

6. Organization

The Parties recognize and agree that the Parties hereto are independent governments. Except for the specific terms herein, nothing herein shall be construed to limit the discretion of the governing bodies of each Party. Nothing herein shall be construed as creating an association, joint venture, or partnership between the Parties, nor to impose any partnership obligations or liabilities on either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of, or to otherwise bind the other Party. Specifically and without limiting the foregoing, subject to compliance with Exhibit B Performance Standards and Level of Service, the District shall have the sole discretion and the obligation to determine the exact method by which the Services described in Section 4 above are provided to the Brightwater Treatment Plant.

No new or separate legal or administrative agency is created to administer the provisions of this Agreement.

7. Resolution of District's Claim for Damages

- 7.1 As a full and complete resolution of the District's Claim for Damages, the County shall pay the District the sum of Eighty Five Thousand Seven Hundred and Twenty Dollars (U.S. \$85,720.00) within thirty (30) days of the execution of this Agreement by the Parties.
- 7.2 In consideration of the mutual covenants contained herein, the District, on behalf of itself and its past and present agents, officers, officials, directors, employees, legal representatives, contractors, consultants, successors and assigns (collectively, the "Releasing Parties") does hereby fully and forever release and discharge the County and its past and present agents, officers, officials, directors, employees, legal representatives, contractors, consultants, successors and assigns (collectively, the "Released Parties") from any and all claims, demands, damages, losses, expenses, causes of action, lawsuits, obligations, costs, judgments, or liabilities of any kind or nature, at law or at equity, whether, known or unknown, suspected or unsuspected, or that anyone claiming by, through or under the Releasing Parties may now have or may in the future claim to have against King County or the Released Parties either directly or indirectly arising out of, or in connection with, those matters that have been or could have been brought in connection with or relating to the District's Claim for Damages. This release and discharge are to be inclusive of any actual or potential claims for attorneys' fees and/or costs.
- 7.3 The Parties agree that the payment of the aforesaid consideration is done entirely for the purpose of a compromise and settlement of a bona fide dispute. Neither the consideration set forth herein, nor the compromise and settlement of said dispute, nor anything contained herein, shall be construed to

be an admission by the County of liability to the District or to any other person or entity, nor shall it be construed to create any rights or interests in third persons or entities. The Parties agree and acknowledge that the fact of this settlement may not be used by the District to prove or establish liability in any action.

8. Indemnification

- 8.1 The District shall defend, indemnify, and hold the County and its officers, officials, employees, and agents free and harmless from any and all demands, costs, claims, judgments, orders, or decrees for personal injuries, death or damage to property arising out of or in any way resulting from any act or omission of the District, or its officers, officials, employees, volunteers, or agents in the performance of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the County, its officers, officials, employees, volunteers, or agent, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the District; and provided further that nothing herein shall require the District to hold harmless or defend the County from any claims arising from the sole negligence of the County, its officers, officials, employees, volunteers, and agents. No liability shall attach to the County by reason of entering into this Agreement except as expressly provided herein.
- 8.2 The County shall defend, indemnify, and hold the District and its officers, officials, employees, and agents free and harmless from any and all demands, costs, claims, judgments, orders, or decrees for personal injuries, death, or damage to property arising out of or in any way resulting from any act or omission of the County, or its officers, officials, employees, volunteers, or agents in the performance of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the District, its officers, officials, employees, volunteers, or agent, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the County; and provided further that nothing herein shall require the County to hold harmless or defend the District from any claims arising from the sole negligence of the District, its officers, officials, employees, volunteers, and agents. No liability shall attach to the District by reason of entering into this Agreement except as expressly provided herein.
- 8.3 Solely for purposes of enforcing the indemnification obligations of a Party under this Section 8, each Party expressly waives, by mutual negotiation, its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, and agrees that the obligation to indemnify, defend, and hold harmless provided for in this Section 8 extends to any such claim brought against the indemnified Party by or on behalf of any employee of the indemnifying Party. The foregoing waiver shall not in any way preclude the

indemnifying Party from raising such immunity as a defense against any claim brought against the indemnifying Party by any of its employees.

9. Insurance

The District shall obtain and maintain at all times hereunder (i) a commercial general liability insurance policy with a minimum policy limit of General Liability - \$1,000,000 combined single limit per occurrence and for those policies with aggregate limits, a \$2,000,000 aggregate limit; (ii) a minimum umbrella coverage of \$6,000,000 each occurrence and \$10,000,000 annual aggregate; (iii) errors and omissions coverage including employment practices liability \$1,000,000 per occurrence and \$2,000,000 annual aggregate; (iv) Automobile Liability - \$1,000,000 combined single limit per accident for bodily injury and property damage; and (v) Workers' Compensation - statutory requirements of the state of residence and employer's liability or stop gap coverage of \$1,000,000 per occurrence, each placed with a reputable and financially strong insurance carrier with an A-rating or better. The policy(ies) shall provide that such policy(ies) shall not be terminated or reduced without thirty (30) days prior notice to the County. On an annual basis, the District will provide a certificate of insurance to the County evidencing the aforementioned coverage.

10. No Third Party Liability and Public Duty Doctrine

This Agreement shall not be construed to provide any benefits to or create a cause of action for or on behalf of any third parties. Specifically and without limiting the foregoing, this Agreement shall not create or be construed as creating an exception to the Public Duty Doctrine.

11. Nondiscrimination

11.1 Employment. The District agrees not to discriminate against any employee or applicant for employment because of sex, age, race, color, creed, national origin, sexual orientation, marital status, or the presence of any sensory, mental, or physical handicap, unless based upon a bonafide occupational qualification. This requirement shall apply without limitation to all aspects of employment (including lay-offs or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship) and advertisement.

11.2 Services and Activities. No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, sexual orientation, age (except minimum age and retirement provisions), marital status, or the presence of any sensory, mental, or physical handicap. Any violation of this provision shall be considered a violation of a material provision of this Agreement and shall be grounds for

termination or suspension in whole or in part of this Agreement by the County and may result in ineligibility for future County agreements.

- 11.3 Other Non-Discrimination Laws. The District shall also comply with all applicable anti-discrimination laws or requirements of any and all jurisdictions having authority.

12. Compliance with Laws and Regulations

The Parties shall comply with all applicable rules and regulations pertaining to them in connection with the matters covered herein.

13. Notices

Any notice required to be given by either Party to the other pursuant to any provision 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:

To District: Snohomish County Fire Protection District
No. 7
8010 - 180th Street SE
Snohomish, WA 98296

With a Copy to: W. Mitchell Cogdill
Cogdill Nichols Rein Wartelle Andrews
Vail
3232 Rockefeller Avenue
Everett, WA 98201

To County: King County
Wastewater Treatment Division
Mailstop: KSC-NR-0503
201 South Jackson Street, Suite 503
Seattle, WA 98104-3855
Attn: Director of Wastewater Treatment
Division

With a Copy to: King County Prosecutor's Office
King County Courthouse – W400
516 Third Avenue
Seattle, WA 98104
Attn: Verna P. Bromley
Sr. Deputy Prosecuting Attorney
Fax: (206) 296-0415

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.

Notices may also be given by facsimile transmission (provided the fax machine has printed a confirmation of receipt). 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.

14. Dispute Resolution

The parties shall use reasonable efforts to mediate any dispute arising under this Agreement. In the event of such a dispute, each party shall designate, in writing, not more than three (3) candidates it proposes to act as a non-binding mediator within ten (10) days following notification of a dispute. If the Parties cannot agree on one of the mediators from the combined list within five (5) days, then the Parties shall promptly meet and select a mediator by blind draw. Upon selection of the mediator, the Parties shall within forty-five (45) days or as soon thereafter as possible, meet and engage in a mediation of the dispute with the assistance of the mediator. The cost for the mediation services shall be borne equally between the Parties, each party paying one-half of the cost. The mediator shall determine reasonable procedures. Testimony and briefing, if any, provided to the mediator shall be inadmissible in any subsequent court proceedings. If mediation fails to resolve the dispute, the Parties may thereafter seek redress in a court of competent jurisdiction. Nothing in this section shall be construed to prohibit either Party from exercising its right to terminate this Agreement as otherwise provided in this Agreement or be construed as a pre-condition to the exercise of such right to terminate.

15. Assignment

The Parties shall not assign this Agreement or any interest, obligation, or duty herein without the express written consent of the other Party.

16. Approval

This Agreement is expressly conditioned upon and subject to the written approval of the authorized representatives of the County and by ordinance of the County Council and by resolution of the District Board of Commissioners and shall not be binding unless and until so approved. This Agreement may be altered, amended, or waived only by a written amendment executed, in the same manner, by both Parties.

17. General Provisions

- 17.1 All of the terms, covenants, and conditions in this Agreement shall extend to and bind any approved legal successors and assigns of the Parties hereto.

ATTACHMENT A

- 17.2 This Agreement shall be deemed to be made and construed in accordance with the laws of the State of Washington. Jurisdiction and venue for any action arising out of this Agreement shall be in King County Washington.
- 17.3 The headings in the Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.
- 17.4 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable by a final decision of any court having jurisdiction on the matter, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect unless such court determines that such invalidity or unenforceability materially interferes with or defeats the purposes hereof, at which time the County shall have the right to terminate the Agreement for cause.
- 17.5 This Agreement constitutes the entire agreement between the Parties. There are no terms, obligations, covenants, or conditions other than those contained herein, No modifications or amendments of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both Parties.
- 17.6 A copy of this Agreement shall be filed with the Snohomish County Auditor's Office.
- 17.7 This Agreement may be executed in counterpart each of which when so executed and delivered shall be an original, but such counterparts shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the District and the County have executed this Agreement as of the latter date of signature below.

SNOHOMISH COUNTY FIRE PROTECTION DISTRICT NO. 7

By: _____

Print Name

TITLE _____

DATE _____

ATTACHMENT A

KING COUNTY

By: _____

Print Name

TITLE _____

DATE _____

METHODOLOGY FOR CALCULATING COST OF SERVICE FOR DISTRICT SERVICES TO THE BRIGHTWATER TREATMENT PLANT

Beginning in the year 2019, the Parties shall determine the Cost of Service due to the District for providing services pursuant to this Agreement to the Brightwater Treatment Plant by taking the ratio of the Brightwater Treatment Plant's assessed value of improvements (excluding land) as determined by the Snohomish County Assessor to the total of all assessed improvements (excluding land) in the District's service area, as determined by the Snohomish County Assessor, and then multiply that ratio by the District's expenditures related to Fire Protection.

For the Life Safety component, the Parties would add to the amount calculated above a fixed amount of \$7,936. This number has been derived by calculating the ratio of the average number of persons at the Brightwater Treatment Plant (113) compared to the number of persons in the District (70,000) multiplied by the District's expenditures related to Life Safety. The Parties could revisit this fixed amount only if the average number of persons at the Brightwater Treatment Plant increases by more than 20 percent. In that case, then the amount would be calculated based upon the ratio of the average number of persons at the Brightwater Treatment Plant compared to the number of persons in the District multiplied by the District's expenditures related to Life Safety.

The total amount from above would then be multiplied by the ratio of the District's costs funded through property taxes. The total amount would then stay fixed through the Renewal Term.

The following example is provided to demonstrate how the Cost of Service for the Renewal Period will be calculated.

EXHIBIT A

HYPOTHETICAL VALUES FOR HYPOTHETICAL RENEWAL TERM IN 20XX

(The Parties acknowledge that the actual values in year 20XX may be significantly more or significantly less than the values set forth below)

Variables		
Assessed Land Value in District 7 service area in 20XX	A	\$2,952,622,738
Assessed Improvement Value in District 7 service area in 20XX	B	\$3,890,376,510
Total Assessed Value (AV) in District 7 service area in 20XX	C	\$6,843,039,248
Brightwater Assessed Land Value in 20XX	D	\$ 22,495,600
Brightwater Assessed Improvement Value in 20XX	E	\$ 30,619,300
Brightwater Total AV in 20XX	F	\$ 53,114,900
District 7 Fire Protection Budget in 20XX	G	\$ 13,618,688
District 7 Emergency Medical Services (EMS) Budget in 20XX	H	\$ 5,017,669
District 7 Total Operating Budget for 20XX	J	\$ 18,636,357
District 7 Total Budgeted Revenues for 20XX	K	\$ 17,159,017
District 7 Total Budgeted Property Taxes for 20XX	L	\$ 13,494,086
Population within District 7 service area in 20XX	M	70,000
Average No. of Persons at Brightwater in 20XX	N	113

Using the values set forth above the Cost of Service pursuant to Section 5 of the Agreement would be calculated as follows:

FIRE PROTECTION COMPONENT

- Step 1: 0.8%
Brightwater proportional share of improvements (E/B)

- Step 2: \$107,186
Brightwater share of Fire Protection Budget (Step 1 x G)

EMS COMPONENT

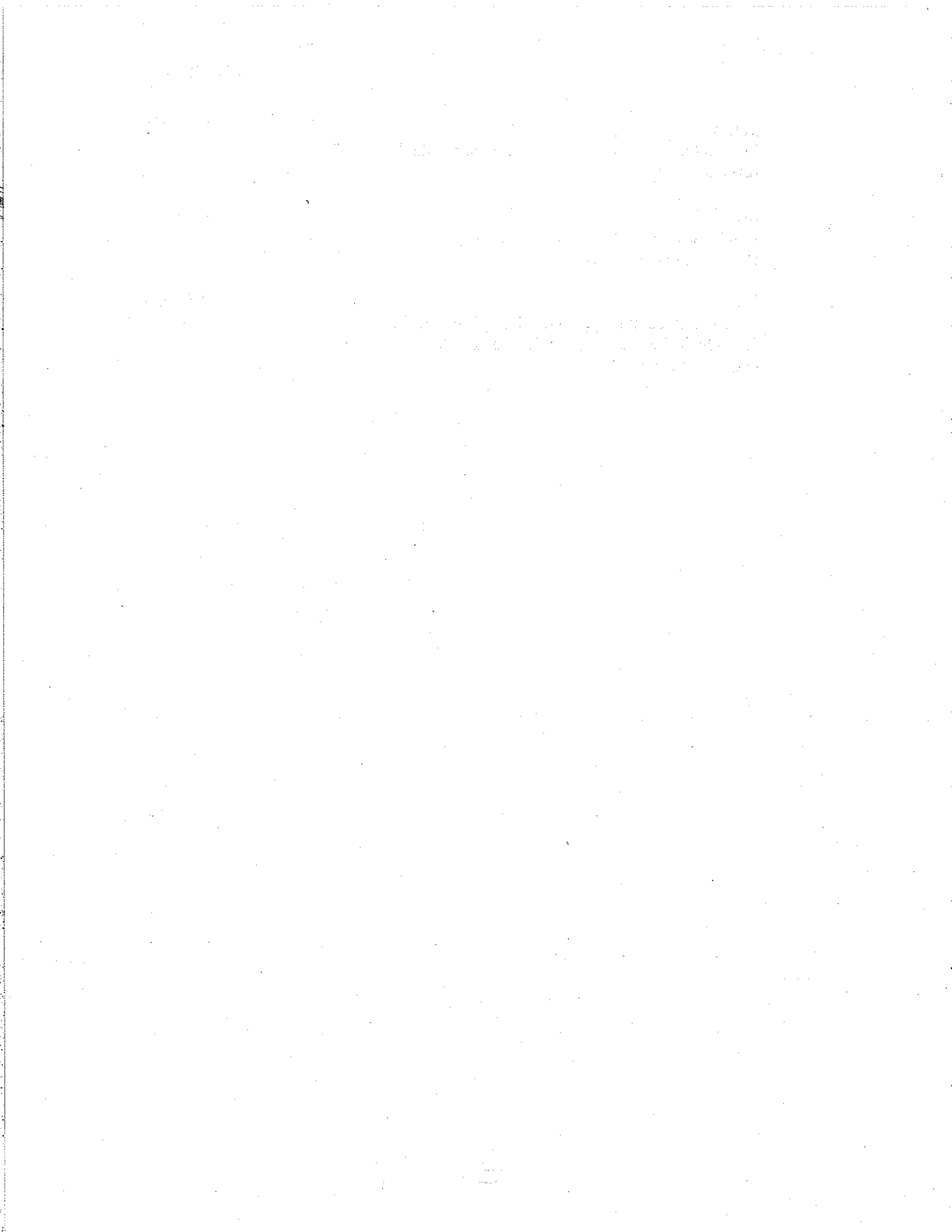
- Step 3: 0.2%
Brightwater proportional share of population (N/M)

- Step 4: \$ 7,936
Is average No. of persons at Brightwater greater than 113 x 120% (135.6)? If yes, then go to Step 5. If no, then skip Step 5 and use \$7,936 for the value in Step 4.

- Step 5 (if applicable): N/A
Brightwater share of EMS budget (Step 3 x H)

EXHIBIT A

Step 6: District 7 property taxes as a percentage of total District 7 revenues	78.641%
Step 7: Fire Protection Component + EMS component (Step 2 + Step 4 or Step 5)	\$115,122
Step 8: Example of Total Brightwater Cost of Service for Hypothetical Renewal Term for year 20XX (Step 7 x Step 6)	\$90,533



PERFORMANCE STANDARDS AND LEVEL OF SERVICE

It is the intent of the District to provide and maintain throughout the term of this Agreement, comprehensive fire and emergency medical services (EMS) to the Brightwater Treatment Plant at or above the level of service and performance King County has received to date. For purposes of establishing a definable level of service, the District and County agree to the following:

1. Fire Suppression Services

The District shall provide all services necessary for fire suppression, hazardous material response and rescue, including all of the following:

- 1.1 Provide Hazardous Materials response capability.
- 1.2 Provide Urban Search and Rescue response.
- 1.3 Provide confined space rescue response.
- 1.4 Provide all fire-related services.
- 1.5 Perform annual training and crew familiarization of the Brightwater Treatment Plant to help maintain a state of readiness.

2. Average Response Time

The District shall maintain an average response time of seven minutes 30 seconds (7:30) for all fire and EMS calls to the Brightwater Treatment Plant. Average response time shall be calculated by summing the time of dispatch to arrival on the scene for all of the fire and EMS calls for a given period of time and dividing that sum by the total number of calls in the defined period.

3. State Law

In addition to the performance standard set forth above, the District agrees to comply with performance measures as set forth in RCW Chapters 35.103 and 52.33 as currently stated or hereafter amended.

4. Emergency Medical Services

Emergency medical services shall be provided at a level consistent with operational guidelines of the District. The District shall maintain and operate emergency medical service vehicles in accordance with Chapter 18.73 RCW and WAC 246-976.

