

ALDERWOOD WATER & WASTEWATER DISTRICT

KING COUNTY

2013 AMENDMENT TO AGREEMENT FOR SEWAGE DISPOSAL

THIS AMENDMENT made as of the _____ day of _____, 2013 between the Alderwood Water & Wastewater District, a municipal corporation of the State of Washington (hereinafter referred to as “the District”) and King County, a political subdivision of the State of Washington (hereinafter referred to as “the County”);

- A. WHEREAS, the District and the County have entered into a long-term agreement for sewage disposal dated December 1, 1966, as amended and previously extended on August 10, 1981, December 16, 1991, and October 2, 1992 (hereinafter collectively referred to as the “Basic Agreement”);
- B. WHEREAS, the County and District have discussed certain changes to, and a second extension of, the Basic Agreement;
- C. WHEREAS, the extension of the Basic Agreement will enable the County to obtain the most favorable bond financing terms for necessary improvements to the region’s wastewater treatment system and will, therefore, result in lower sewer rates and sewage treatment capacity charges for the system’s ratepayers;
- D. WHEREAS, the District has invested in and constructed improvements to the District’s sewage facilities in order to route sewage and industrial waste to County facilities for disposal rather than to the City of Everett’s facilities;
- E. WHEREAS, the District has invested significant resources in order to upgrade and expand its own Picnic Point Wastewater Treatment Facility (“PPWTF”). The

additional capacity provides the District an opportunity to treat sewage and industrial waste from areas which have historically been served by the County for disposal.

- F. WHEREAS, the District and the County have discussed redirecting a portion of the District's sewage from King County's Swamp Creek trunk line to the PPWTF, and redirecting portions of the District's sewage from the City of Everett to King County's North Creek and Swamp Creek trunk lines;
- G. WHEREAS redirecting sewage benefits the District by maximizing the efficient operation of the PPWTF, and benefits the County and its ratepayers by reducing capacity demands on the Swamp Creek trunk line;
- H. WHEREAS, the County has made significant improvements to its own Metropolitan Sewerage Facilities, and it is in the economic interests of the County's ratepayers to maintain the total number of Equivalent Residential Units (“ERUs”) whose sewage is received from the District’s service areas;
- I. WHEREAS, the District intends to redirect sewage from Areas A and B on Exhibit A from the City of Everett to King County. The District has calculated that Areas A and B contain approximately 2473 ERUs as of December 31, 2011.
- J. WHEREAS, the District intends to redirect sewage from Area D on Exhibit A from King County to the PPWTF. The District has calculated that Area D contains approximately 2368 ERUs as of December 31, 2011.
- K. WHEREAS, the calculation of ERUs is necessarily inexact because of the requirement to utilize a conversion factor for commercial accounts and because accounts are frequently changing as a result of construction and reconstruction. The District and County have determined that the exchange of sewage from Areas A/B for

D is numerically reasonably equal, and will have an approximately equivalent impact on each other's systems.

L. WHEREAS, some customers in Area D still owe capacity charges to the County. The County represents that, as of the effective date of this Amendment, no customers of Area D have raised or threatened to raise objections to the capacity charges owed to the County. The District will pay the County the amount of those capacity charges, and the County will assign to the District its right to collect those capacity charges.

M. WHEREAS, the District and the County concur that the below changes and extension of the Basic Agreement are in the best interests of the parties and the ratepayers of both the District and Metropolitan Area;

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Section 1. Amendment of Basic Agreement. Section 2 of the Basic Agreement is amended by deleting the section and replacing it with the following:

“Section 2: Delivery and Acceptance of Sewage. The District shall deliver to the County all the sewage and industrial waste collected in all portions of the District consistent with the Basic Agreement as amended and, except as described in Section 19 below, the County shall accept the sewage and waste delivered for treatment and disposal provided subject to such reasonable rules and regulations as may be adopted from time to time by the County.”

Section 2. Amendment of Basic Agreement. Section 5.3 of the Basic Agreement is amended by adding the following new subparagraph (d). The additional charge described in this

subparagraph 5.3(d) shall not be made until and unless this new subparagraph (d) is included within the sewage disposal agreements of all other Participants.

“(d) An additional charge may be made to recover unforeseen costs to operate and maintain the metropolitan sewerage system or meet debt requirements if the County Executive declares and the County Council by a supermajority vote (two thirds of members) finds that an emergency exists and the system cannot be adequately maintained, and debt requirements or debt policies met, without such additional charge. The additional charge shall then be effective no earlier than the first day of the fourth month following the emergency declaration described in this subparagraph 3(d) and shall be billed and collected in the same manner as the monthly rate referenced in subparagraph 3(c). The additional charge described in this paragraph 3(d) may be incorporated into the next rate setting cycle but will otherwise terminate within twelve months of the effective date.”

Section 3. Amendment of Basic Agreement. Section 5.4 of the Basic Agreement is amended by deleting the section and replacing it with the following paragraph 4.

“4. (a) The County shall impose a charge or charges (hereinafter the capacity charge) directly on the future customers of a Participant for purposes of paying for capacity in Metropolitan Sewerage Facilities. The proceeds of the capacity charge shall be used only for capital expenditures or defeasance of outstanding revenue bonds prior to maturity. The capacity charge shall be set at a level to ensure that, in combination with the monthly sewer rate described in subsection 3 above, 95 percent of the costs incurred to provide the wastewater conveyance, treatment, and biosolids capacity to serve new customers are recovered from new customers.”

(b) The District shall, at the County's request, provide such information regarding new Residential Customers and Residential Customer Equivalents as may be reasonable and appropriate for purposes of implementing the capacity charge."

Section 4. Amendment of Basic Agreement. The Basic Agreement is amended by adding a new Section 17 as follows:

"Section 17. Amendments. The District agrees to amend and hereby concurs in any amendment to this agreement which incorporates any changes in the terms for sewage disposal and payment therefore as may be proposed by the County and agreed to by at least 90 percent of the Participants and by those Participants that represent, in total, at least 90 percent of the residential customers and residential customer equivalents then served by the Metropolitan Sewerage System."

Section 5. Amendment of Basic Agreement. The Basic Agreement is amended by adding a new Section 18 as follows:

"Section 18: Option to Accept Other Amendments. If the Basic Agreements with any other Participants are amended or otherwise modified to include terms, conditions, or provisions not included in the Basic Agreement or this amendment, the District shall have the option of incorporating said terms, conditions or provisions into its Basic Agreement. The County shall then expedite and approve any amendments to the Basic Agreement as may be necessary and appropriate for such purpose."

Section 6. Extension of Basic Agreement. The Agreement for Sewage Disposal between Alderwood Water and Sewer District and King County dated December 1, 1966, as amended, is hereby extended for a period of twenty years and shall continue in full force and effect until July 1, 2056. The agreement dated December 1, 1966, as subsequently amended and extended shall constitute the entire Agreement for Sewage Disposal between the parties.

Section 7. Flow Swap to Optimize Regional and Local Conveyance. The Basic Agreement is amended by adding a new Section 19 as follows:

“Section 19. Flow Swap to Optimize Regional and Local Conveyance.

(a) The District and County hereby agree to a ‘flow swap,’ meaning the District may transfer flows from those Equivalent Residential Units (ERUs) contained in ‘Area D’, as depicted on Exhibit A, away from the County’s regional wastewater treatment facilities provided the District transfers approximately the same number of ERUs to the County’s treatment facilities from ‘Area A’ and ‘Area B’ combined, as depicted on Exhibit A. On or before March 1, 2013, the District shall provide County with an accurate list of accounts for Areas A, B, and D, including the name of the legal owner of the property, street address and tax identification number for the parcel.

(b) To effect this flow swap, the District shall at its own expense complete any and all improvements necessary and begin to deliver to the County all the sewage and industrial waste collected in the region identified as ‘Area A’ on Exhibit A. The District shall actually begin sending flows to the County following completion of the County’s North Creek Interceptor Project or on an alternative date if agreed to in writing by the District and County whichever occurs earlier.

(c) By October 1, 2014, the District intends to, at its own expense, complete any and all improvements necessary to begin to deliver to the County all the sewage and industrial waste collected in the region identified as 'Area B' in Exhibit A. The District will actually begin to deliver sewage and industrial waste from Areas A and B to the County prior to redirecting sewage within Area D as described in paragraph (d) below.

(d) The District shall continue to deliver to the County all the sewage and industrial waste collected from 'Area D' as depicted on Exhibit A until such time as the District has completed, at its own expense, any and all improvements necessary to deliver such sewage and industrial waste to the District's own PPWTF. Upon completion of the necessary improvements, the District shall provide at least 30 days' notice to the County of the date after which it shall no longer deliver the sewage and waste from Area D to the County.

(e) After the District has provided the notice described in subparagraph (d) above, the County shall provide the District with the following information for those accounts within Area D: the name of each customer with an open capacity charge account; the amount of capacity charge remaining to be paid; and the terms of payment. Within 60 days after the District receives the above information from the County and begins to deliver sewage and industrial waste from Area D to the District's own Picnic Point Wastewater Treatment Facility, the District shall pay any remaining balances owed at that date for capacity charges imposed for Residential Customers and ERUs in the region designated 'Area D' in Exhibit A.

(f) The County assigns to the District any existing and future rights to collection of any remaining capacity charges owed by customers in Area D, which assignment shall be effective upon payment by the District to the County of the remaining capacity charges and transfer of sewage and industrial waste in Area D from the County to the District's PPWTF. The County

agrees to execute appropriate documents, if any, reasonably necessary to implement this assignment.

(g) The County and District acknowledge that any new connection to the public sewer system in Areas A and B which occurs on or after the date that the District redirects the flows from those areas to the County shall be subject to a capacity charge payable to the County.

(h) The District shall continue to deliver to the County all the sewage and industrial waste collected in the region identified as 'Area C' as depicted and described in Exhibit A."

Section 8. Compliance with Applicable Laws. The Basic Agreement is amended by adding a new Section 20 as follows:

"Section 20: Compliance with Applicable Laws.

(a) The County and District intend that the payment of the remaining capacity charge amounts by the District to the County and assignment of existing and future rights from the County to the District for the collection of the remaining capacity charge balances under Section 19 shall be in compliance with all applicable laws and regulations. To the extent that any court holds, adjudges, or otherwise rules as a consequence of any claims, cross-claims or counterclaims raised or alleged in any lawsuit or action of any type, whether currently existing or subsequently asserted, that payment of funds by the District to the County as required under Section 19 of this Amendment shall be illegal or in violation of any law or regulation, the District agrees to reject and disavow, and hereby rejects and disavows, any entitlement, recovery, right or benefit (including but not limited to attorney's fees, whether or not part of an alleged 'common fund,' and any litigation costs) resulting from any disposition, in whole or in

part, of any claims raised or related to payment of the capacity charge amounts and assignment of rights under Section 19, including any claims raised against or related to King County.

(b) The District agrees to affirmatively support, join, and otherwise not oppose or object to any position of King County in which King County contends, argues, or otherwise asserts that it is not obligated or required to remit, reimburse, pay back, credit, or otherwise return to the District, the customers or ratepayers of the District, or any other entity or person, any portion of the remaining capacity charge amount paid by the District to the County under applicable law or regulations or the terms of this Amendment.”

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first written above; said agreement to be effective upon execution.

Alderwood Water & Wastewater District

King County

By _____

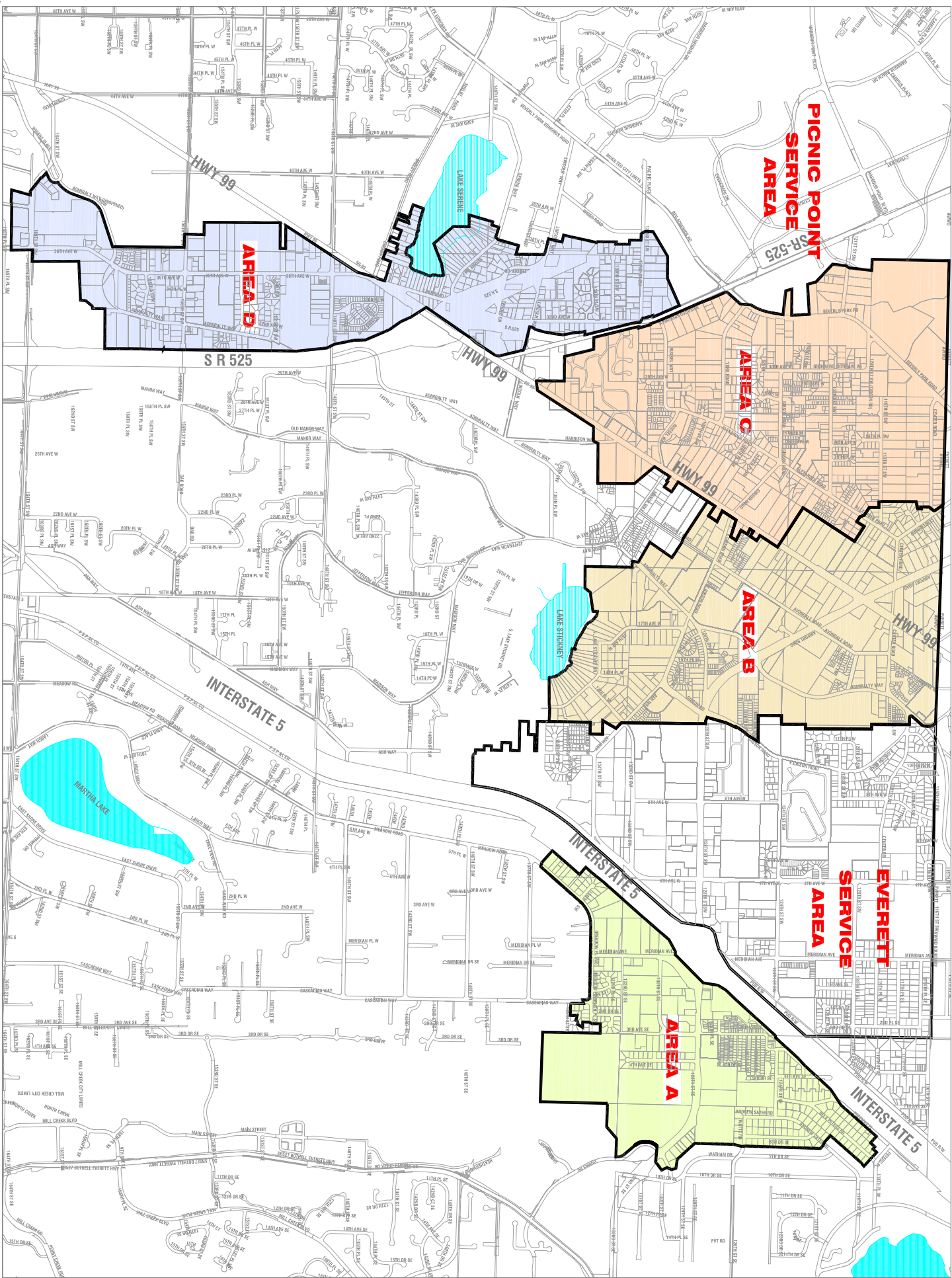
By _____

Title _____

Title _____

Attest:

Attest:



**PICNIC POINT
SERVICE
AREA**

AREA D

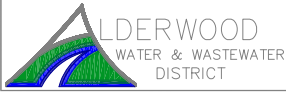
AREA C

AREA B

**EVERETT
SERVICE
AREA**

AREA A

DETAIL 1 OF EXHIBIT A-KING CO -AWWD SEWER DISPOSAL AGREEMENT AMENDMENT



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Exhibit A