

**AMENDMENT TO INTERLOCAL AGREEMENT
BETWEEN THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON,
AND
SOOS CREEK WATER AND SEWER DISTRICT, KING COUNTY, WASHINGTON,
REGARDING CONVEYANCE OF BLACK DIAMOND WASTEWATER FLOWS**

THIS AMENDMENT TO AGREEMENT is made and entered into by and between the City of Black Diamond, King County, Washington, a municipal corporation, herein referred to as the City, and Soos Creek Water and Sewer District, King County, Washington, a municipal corporation, herein referred to as the District.

WHEREAS, the City and the District entered into the following agreement by execution by the City on the 5th day of September, 1990:

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON
AND
SOOS CREEK WATER AND SEWER DISTRICT, KING COUNTY, WASHINGTON,
REGARDING CONVEYANCE OF BLACK DIAMOND WASTEWATER FLOWS**

herein referred to as the Agreement; and

WHEREAS, the Agreement provided that the City's relationship with the District would be as a customer of the District for the purpose of the District providing pumped conveyance of City wastewater flows through the District (Section 2.); and

WHEREAS, the Agreement provided that City payment for conveyance would be no later than 10 days after the last day of each month during the term of the Agreement (Section 7.); and

WHEREAS, over time it has been the City's and the District's experience that the City's receipts from its own customers do not coincide with the payment due date of the Agreement, preventing timely payment of charges to the District on several occasions; and

WHEREAS, the City and the District now desire to modify and clarify the Agreement as to the due date of payments for conveyance, and as to procedures and consequences in the event of late payments.

NOW, THEREFORE, it is mutually covenanted and agreed by and between the parties hereto as follows:

SECTION 1: That the first paragraph of Section 7. of the Agreement shall be amended to the following:

SECTION 7. CITY PAYMENT FOR DISTRICT PUMPED CONVEYANCE CHARGES. Commencing with the first month in which sewage collected by the City is conveyed to the District, the City shall pay to the District, no later than thirty calendar days after the last day of each month during the term of this agreement, a sewage conveyance charge determined as provided in this section.

SECTION 2: That the City and the District herein confirm that in the event of late payment the District may provide that where such charges are delinquent, penalties and interest shall be added thereto in the same amounts as the District utilizes generally for its other customers, and may file liens and enforce collection, all in accordance with RCW 57.08.081.

SECTION 3: That except as amended hereby, the terms of the Agreement are hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals.

CITY OF BLACK DIAMOND

ACCEPTED AND EXECUTED this 8th day of April, 1999.

By and for the City, signed


HOWARD BOTTS, Mayor

ATTEST:

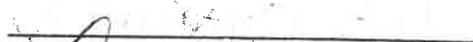

CITY CLERK

CITY OF BLACK DIAMOND

SOOS CREEK WATER AND SEWER DISTRICT

ACCEPTED AND EXECUTED this 21 day of April, 1999.

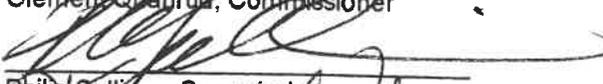
By and for the District, signed


Steve Sandelius, Commissioner

By and for the District, signed


Clement Quapud, Commissioner

By and for the District, signed


Phillip Sullivan, Commissioner

By and for the District, signed


Karen Webster, Commissioner

By and for the District, signed


Patrick Brazil, Commissioner

INTERLOCAL AGREEMENT

BETWEEN THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON
AND
SOOS CREEK WATER & SEWER DISTRICT, KING COUNTY, WASHINGTON
REGARDING CONVEYANCE OF BLACK DIAMOND WASTEWATER FLOWS

THIS AGREEMENT IS MADE AND ENTERED INTO BY AND BETWEEN THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, A MUNICIPAL CORPORATION, HEREIN REFERRED TO AS THE CITY, AND THE SOOS CREEK WATER & SEWER DISTRICT, KING COUNTY, WASHINGTON, A MUNICIPAL CORPORATION, HEREIN REFERRED TO AS THE DISTRICT.

WHEREAS, THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, HEREINAFTER EPA, HAS DETERMINED THAT THE CITY'S INNOVATIVE AND ALTERNATIVE WASTEWATER TREATMENT FACILITY, HEREINAFTER I&A WWTF, IS A FAILED SYSTEM AND IS ELIGIBLE FOR AN EPA MODIFICATION AND/OR REPLACEMENT GRANT, HEREINAFTER M/R GRANT, TO MODIFY OR REPLACE THE EXISTING I&A WWTF.

WHEREAS, THE WASHINGTON STATE DEPARTMENT OF ECOLOGY, HEREINAFTER WDOE, AND EPA HAVE FORMALLY APPROVED THE CITY'S FACILITY PLAN STUDY CONCLUSION TO REPLACE THE CITY'S FAILED I&A WWTF WITH A CITY PUMP STATION AND PIPELINE SYSTEM TO THE DISTRICT, AND WITH CONVEYANCE PROVIDED THROUGH DISTRICT FACILITIES AND THROUGH KENT AND MILL CREEK FACILITIES UNDER THE DISTRICT'S JOINT USE AGREEMENTS, AND THROUGH THE METRO SYSTEM, TO CONVEY THE CITY'S WASTEWATER TO THE RENTON WASTEWATER TREATMENT FACILITY, WHICH IS OWNED AND OPERATED BY THE METROPOLITAN MUNICIPALITY OF SEATTLE, HEREINAFTER METRO.

WHEREAS, THE CITY AND THE DISTRICT DESIRE AN INTERLOCAL AGREEMENT WHEREIN THE DISTRICT WILL PROVIDE FOR CONVEYANCE OF BLACK DIAMOND WASTEWATER FLOWS THROUGH DISTRICT, KENT, AND MILL CREEK FACILITIES TO METRO.

WHEREAS, THE CITY DESIRES TO PROVIDE SEWER SERVICE ONLY TO CUSTOMERS WITHIN THE CITY.

WHEREAS, AN INTERLOCAL AGREEMENT BETWEEN THE CITY AND THE DISTRICT FOR CONVEYANCE OF CITY WASTEWATER FLOWS TO METRO MUST BE FORMALLY CONCLUDED BETWEEN THE CITY AND THE DISTRICT AND THEN APPROVED BY BOTH WDOE AND EPA, PRIOR TO THESE AGENCIES PROVIDING FUNDING FOR THE CONSTRUCTION OR PURCHASE OF ANY CITY WASTEWATER

CONVEYANCE FACILITIES OR CAPACITY WITHIN THE CITY, DISTRICT, KENT, OR MILL CREEK SYSTEMS.

WHEREAS, UNDER THE CITY'S EPA M/R GRANT TO REPLACE THE CITY'S FAILED I&A WWTF, THE EPA ELIGIBLE COSTS FOR DESIGN AND CONSTRUCTION OF ANY DISTRICT CONVEYANCE CAPACITY FOR CITY WASTEWATER FLOWS WITHIN THE DISTRICT, KENT, OR MILL CREEK SYSTEMS WOULD OCCUR WELL AFTER THE EPA FUNDING SUNSET DATE FOR THE CITY TO OBTAIN EPA GRANT FUNDING FOR THAT PURPOSE.

WHEREAS, CERTAIN MONIES MUST BE MADE AVAILABLE TO THE DISTRICT BY THE CITY TO ENABLE THE DISTRICT TO PROVIDE CONVEYANCE CAPACITY TO THE CITY.

WHEREAS, THE CITY WILL OBTAIN WDOE GRANT FUNDING, WHICH MUST BE CHARACTERIZED AS BUY-IN COST FUNDING TO COMPLY WITH WDOE GRANT REQUIREMENTS, TO BE PLACED INTO A BUY-IN INVESTMENT ACCOUNT WHICH SHALL BE JOINTLY CONTROLLED BY THE CITY AND THE DISTRICT. THIS BUY-IN FUNDING SHALL BE UTILIZED TO COMPENSATE THE DISTRICT FOR INCREASES IN DISTRICT PRESENT WORTH COSTS OF FUTURE CONVEYANCE CAPACITY UPGRADES, DUE TO CITY FLOW IMPACTS WHICH ACCELERATE THE DISTRICT'S SCHEDULE FOR THOSE FUTURE CAPACITY UPGRADES, AND TO ASSURE CITY FINANCING FOR THE CITY'S PROPORTIONAL COST SHARE IN FUTURE DISTRICT, KENT, AND MILL CREEK CAPITAL COST CONVEYANCE CAPACITY UPGRADES WHICH THE DISTRICT WILL PROVIDE FOR CITY CONVEYANCE CAPACITY.

NOW THEREFORE, IT IS HEREBY MUTUALLY COVENANTED AND AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

SECTION 1. ACCEPTANCE AND CONVEYANCE OF WASTEWATER.

THE CITY SHALL DELIVER TO THE DISTRICT'S PUMP STATION NUMBER 11 ALL OF THE SEWAGE AND INDUSTRIAL WASTES COLLECTED BY THE CITY, AND THE DISTRICT SHALL ACCEPT AND PROVIDE FOR PUMPED CONVEYANCE OF THE CITY'S WASTEWATER FLOWS THROUGH EXISTING DISTRICT CONVEYANCE FACILITIES, BOTH THOSE FACILITIES SOLELY OF THE DISTRICT AND THOSE KENT AND MILL CREEK FACILITIES UNDER OTHER JOINT USE AGREEMENTS WITH THE DISTRICT, TO THE METRO SYSTEM, AND TO PROVIDE WASTEWATER CONVEYANCE THROUGH THESE EXISTING FACILITIES FOR A MAXIMUM CITY POPULATION EQUIVALENT OF 3600, EXCEPT AS MAY BE MODIFIED BY

SUBSEQUENT AGREEMENT BETWEEN THE PARTIES.

THE DISTRICT SHALL ALSO PROVIDE FOR PUMPED CONVEYANCE OF THE CITY'S WASTEWATER FLOWS THROUGH FUTURE DISTRICT CONSTRUCTED CAPACITY UPGRADES OF DISTRICT, KENT, AND MILL CREEK CONVEYANCE FACILITIES IN WHICH THE DISTRICT AND THE CITY HEREBY AGREE TO JOINTLY FUND DESIGN AND CONSTRUCTION AND TO DESIGN AND CONSTRUCT CONVEYANCE CAPACITY UPGRADES OF THE DISTRICT, KENT, AND MILL CREEK CONVEYANCE FACILITIES TO THE METRO SYSTEM, WITH CITY AND DISTRICT COST SHARING TO BE PROPORTIONALLY BASED ON A DESIGNED CONVEYANCE CAPACITY SHARE BASIS AND TO SUPPORT A MINIMUM CITY POPULATION OF 3600, OR GREATER, AS THE CITY MAY CHOOSE TO FUND.

THE CITY SHALL COMPENSATE THE DISTRICT FOR THE OPERATION AND MAINTENANCE COSTS OF PROVIDING PUMPED CONVEYANCE OF CITY WASTEWATER FLOWS, SHALL PROVIDE PROPORTIONAL CAPITAL COST FUNDING FOR FUTURE CONVEYANCE CAPACITY UPGRADES, AS NEW CONVEYANCE SYSTEMS, WITHIN THE DISTRICT, KENT, AND MILL CREEK SYSTEMS, AND SHALL LIMIT THE CITY'S LOCAL SEWER SERVICE AREA TO WITHIN CITY LIMITS, TO THE EXCLUSION OF SEWER SERVICE TO LAKE SAWYER (WATER DISTRICT 86) AND TO COVINGTON CREEK WATER DISTRICT.

SECTION 2. CITY RELATIONSHIP WITH THE DISTRICT. THE CITY SHALL BE AS A CUSTOMER OF THE DISTRICT SOLELY FOR THE PURPOSE OF THE DISTRICT PROVIDING PUMPED CONVEYANCE OF CITY WASTEWATER FLOWS THROUGH DISTRICT, KENT, AND MILL CREEK CONVEYANCE FACILITIES, TO THE METRO SYSTEM.

UNDER OTHER INTERLOCAL AGREEMENTS, THE DISTRICT JOINTLY UTILIZES CERTAIN FACILITIES WITH THE CITY OF KENT AND WITH KENT/METRO (MILL CREEK INTERCEPTOR) FOR PURPOSES OF CONVEYANCE OF THE DISTRICT'S WASTEWATER FLOWS TO THE METRO SYSTEM. WITH RESPECT TO THOSE INTERLOCAL AGREEMENTS, AND FOR THE USE OF THOSE EXISTING FACILITIES, CITY WASTEWATER FLOWS SHALL BE CONSIDERED AS INTEGRAL TO DISTRICT FLOWS WHERE WASTEWATER FLOW CAPACITY ALLOCATIONS ARE ADDRESSED IN THOSE OTHER INTERLOCAL AGREEMENTS.

FOR ANY NEW PUMPED CONVEYANCE FACILITIES CONSTRUCTED WITHIN THE DISTRICT, KENT, AND MILL CREEK SYSTEMS, WHERE THE CITY PARTICIPATES IN THE CAPITAL COST AND THEREBY RESERVES A PROPORTIONAL SHARE OF DESIGN FLOW CAPACITY IN THOSE CONVEYANCE

CAPACITY UPGRADES, THE DISTRICT SHALL REMAIN AS OWNER AND OPERATOR FOR PURPOSES OF THIS AGREEMENT AND IN THE DISTRICT'S RELATIONSHIP WITH THE CITY.

THE CITY'S LOCAL SEWER SERVICE AREA FACILITIES AND THE CITY'S PUMP STATION AND PIPELINE SYSTEM TO THE DISTRICT'S PUMP STATION NUMBER 11 SHALL REMAIN UNDER THE OWNERSHIP AND OPERATION OF THE CITY, SEPARATE AND APART FROM THE DISTRICT.

SHOULD METRO CONSTRUCT FUTURE CONVEYANCE CAPACITY WHICH REPLACES SEGMENTS OF THE DISTRICT, KENT, OR MILL CREEK SYSTEMS, THEN FOR THAT SEGMENT OF THE CONVEYANCE SYSTEM, THE CITY'S RELATIONSHIP WITH THE DISTRICT SHALL BE REPLACED WITH A DIRECT CITY/METRO RELATIONSHIP, INCLUDING FOR PURPOSES OF THE CITY PROVIDING CAPITAL COST FUNDING FROM THE CITY AND DISTRICT JOINTLY CONTROLLED BUY-IN INVESTMENT ACCOUNT, AND FOR THE PURPOSES OF CITY PAYING OPERATIONS AND MAINTENANCE COSTS DIRECTLY TO METRO. IT IS INTENDED THAT THE DISTRICT MAY ULTIMATELY BE ABLE TO DISPENSE WITH PROVIDING PUMPED CONVEYANCE FOR CITY WASTEWATER FLOWS WHEN THE METRO SYSTEM IS EXTENDED THROUGH MILL CREEK, KENT, AND DISTRICT SYSTEMS.

SECTION 3. SEPARATE AGREEMENT BETWEEN THE CITY AND METRO. THE CITY SHALL EXECUTE A SEPARATE INTERLOCAL AGREEMENT WITH METRO FOR METRO'S CONVEYANCE AND TREATMENT OF THE CITY'S WASTEWATER FLOWS WITHIN THE METRO SYSTEM.

METRO CHARGES FOR CITY WASTEWATER FLOWS SHALL BE PAID DIRECTLY FROM THE CITY TO METRO. THE CITY WILL COPY THE DISTRICT ON THE MONTHLY METRO SERVICE CHARGE TO THE CITY.

WHILE THE CITY SHALL REMAIN AS OWNER AND OPERATOR OF THE CITY'S PUMP STATION AND PIPELINE CONVEYANCE SYSTEM TO THE DISTRICT, METRO MAY PROVIDE ASSISTANCE TO THE CITY IN THE OPERATION AND MAINTENANCE OF THAT SYSTEM, UNDER A SEPARATE AGREEMENT BETWEEN THE CITY AND METRO.

SECTION 4. LIMITATIONS ON DISTRICT SERVICE PROVIDED FOR CITY WASTEWATER FLOWS. THE CITY AGREES TO LIMIT THE CITY'S LOCAL SERVICE AREA FOR SEWER CONNECTIONS TO WITHIN CITY LIMITS, AND AS THE CITY LIMITS MAY BE MODIFIED BY ANNEXATION. THE CITY FURTHER AGREES NOT TO PROVIDE SEWER SERVICE TO EITHER LAKE SAWYER (WATER

DISTRICT 86) OR COVINGTON CREEK WATER DISTRICT.

THE DISTRICT SHALL PROVIDE CONVEYANCE OF CITY WASTEWATER FLOWS THROUGH EXISTING DISTRICT, KENT, AND MILL CREEK FACILITIES UP TO A MAXIMUM CITY SEWER SERVICE POPULATION LIMIT OF 3600.

THE DISTRICT'S FLOW LIMITATION UPON THE CITY FOR A MAXIMUM SEWER SERVICE POPULATION OF 3600 MAY BE MODIFIED BY SUBSEQUENT AGREEMENT BETWEEN THE CITY AND THE DISTRICT FOR THE USE OF EXISTING DISTRICT, KENT, AND MILL CREEK CONVEYANCE FACILITIES; AND/OR, IN THE FUTURE, BY THE CITY INCREASING THE CITY'S DESIGN VOLUME OF FLOW AND CAPITAL COST FUNDING SHARE IN THE FUTURE CAPACITY UPGRADES FOR THE DISTRICT, KENT, AND MILL CREEK SYSTEMS ABOVE THAT REQUIRED TO SUPPORT A CITY SEWER SERVICE POPULATION OF 3600.

SECTION 5. OPERATIONAL & MAINTENANCE RELATIONSHIP. THE CITY'S LOCAL SEWER SERVICE AREA FACILITIES AND THE CITY'S PUMP STATION AND PIPELINE SYSTEM TO THE DISTRICT'S PUMP STATION NUMBER 11 SHALL REMAIN UNDER THE OWNERSHIP AND OPERATION OF THE CITY, SEPARATE AND APART FROM THE DISTRICT.

CITY WASTEWATER FLOWS SHALL BE MAINTAINED WITHIN EPA STANDARDS FOR VOLUME OF FLOW AS RECEIVED AT THE DISTRICT'S PUMP STATION NUMBER 11, AND THE CITY SHALL PROVIDE FOR FLOW MONITORING AT THAT POINT. WHERE CITY VOLUME OF FLOW EXCEEDS THOSE EPA STANDARDS, THE CITY SHALL:

1. MAKE ADDITIONAL MONTHLY OPERATIONS AND MAINTENANCE PAYMENTS TO THE DISTRICT IN ACCORDANCE WITH "SECTION 7. DISTRICT PUMPED CONVEYANCE CHARGES TO THE CITY".
2. TAKE IMMEDIATE CORRECTIVE ACTION TO REDUCE ANY EXCESSIVE WASTEWATER VOLUMES OF FLOW, AND/OR
3. IF AVAILABLE, RESTRICT THE REMAINING AVAILABLE CITY SEWER SERVICE CONNECTIONS, AS PROVIDED UNDER THE ALLOWABLE MAXIMUM TOTAL NUMBER OF POPULATION EQUIVALENTS FOR WHICH THE DISTRICT HAS COMMITTED TO PROVIDE CONVEYANCE, SUCH THAT THE THEN CALCULATED CITY ULTIMATE MAXIMUM TOTAL FLOW VOLUME WILL NOT EXCEED THAT WHICH WOULD RESULT FROM THE ORIGINAL MAXIMUM CITY SEWER SERVICE POPULATION COMMITMENT OF THE DISTRICT AT THE MAXIMUM ALLOWABLE EPA VOLUME OF FLOW STANDARD. UNDER THIS

ALTERNATIVE, THE CITY MAY RESTORE THE REMAINING CITY SEWER SERVICE CONNECTIONS WHEN THE EXCESSIVE FLOW CONDITION HAS BEEN CORRECTED.

THE CITY AGREES TO MINIMIZE SULFIDE GENERATION IN THE CITY'S WASTEWATER THROUGH THE DESIGN OF THE CITY'S PUMP STATION AND PIPELINE SYSTEM TO THE DISTRICT'S PUMP STATION NUMBER 11 AND BY PROVIDING FOR CHEMICAL ADDITION AT THE CITY'S PUMP STATION. THE CITY SHALL SPECIFY OPERATING PROCEDURES IN THE SYSTEM OPERATIONS AND MAINTENANCE MANUAL, AND SHALL MODIFY THOSE PROCEDURES AS NEEDED DURING THE ONE YEAR COMMISSIONING PERIOD, TO MAINTAIN THE LEVEL OF SOLUBLE HYDROGEN SULFIDE IN THE CITY'S WASTEWATER TO BELOW 1/2 PART PER MILLION ON A SIX HOUR AVERAGE. IN ADDITION, THE CITY SHALL REQUIRE PRE-TREATMENT OF INDUSTRIAL WASTES IN ACCORDANCE WITH METRO REQUIREMENTS AND SHALL REQUIRE GREASE TRAPS TO BE INSTALLED ON ALL RESTAURANTS.

FOR PURPOSES OF THIS AGREEMENT AND IN THE DISTRICT'S RELATIONSHIP WITH THE CITY, THE DISTRICT SHALL BE AS OWNER AND OPERATOR AND SHALL PROVIDE FOR OPERATION AND MAINTENANCE OF THE EXISTING DISTRICT, KENT, AND MILL CREEK SYSTEMS IN PROVIDING PUMPED CONVEYANCE SERVICES TO THE CITY.

FOR PURPOSES OF THIS AGREEMENT AND IN THE DISTRICT'S RELATIONSHIP WITH THE CITY, FOR ANY FUTURE CONVEYANCE CAPACITY UPGRADES CONSTRUCTED WITHIN THE DISTRICT, KENT, AND MILL CREEK SYSTEMS, WHERE THE CITY PARTICIPATES IN THE CAPITAL COST AND RESERVES A PROPORTIONAL SHARE OF DESIGN FLOW CAPACITY IN ANY DISTRICT CONVEYANCE CAPACITY UPGRADE, THE DISTRICT SHALL REMAIN AS OWNER AND OPERATOR AND SHALL PROVIDE FOR THE OPERATION AND MAINTENANCE OF THOSE SYSTEMS.

SECTION 6: RESPONSIBILITY FOR DAMAGES:

1. CONCERNING CITY USE OF DISTRICT FACILITIES:

ALL CITY FACILITIES AS DESCRIBED HEREIN SHALL BE CONSTRUCTED, OPERATED AND MAINTAINED BY THE CITY. WHERE THE CITY UTILIZES ANY DISTRICT FACILITIES, THE CITY SHALL BE RESPONSIBLE FOR ANY DAMAGE TO DISTRICT FACILITIES RESULTING FROM THE CITY'S USE, OR USE BY ITS CUSTOMERS. REPAIRS TO DISTRICT FACILITIES MADE NECESSARY BY SUCH DAMAGE SHALL BE PERFORMED BY THE DISTRICT. THE REASONABLE

COST FOR SUCH REPAIRS WILL BE BILLED TO THE CITY, AND SHALL BEAR INTEREST, AT THE THEN EXISTENT NINETY (90) DAY TREASURY BILL RATE, AFTER THIRTY (30) DAYS FROM THE DATE OF BILLING.

THE DISTRICT SHALL NOT BE LIABLE FOR ANY CLAIMS BY THIRD PARTIES ARISING FROM ACTS OR DAMAGES BY THE CITY OR ITS CUSTOMERS IN USING DISTRICT FACILITIES PURSUANT TO THIS AGREEMENT.

SECTION 7. CITY PAYMENT FOR DISTRICT PUMPED CONVEYANCE CHARGES. COMMENCING WITH THE FIRST MONTH IN WHICH SEWAGE COLLECTED BY THE CITY IS CONVEYED TO THE DISTRICT, THE CITY SHALL PAY TO THE DISTRICT, NO LATER THAN 10 CALENDAR DAYS AFTER THE LAST DAY OF EACH MONTH DURING THE TERM OF THIS AGREEMENT, A SEWAGE CONVEYANCE CHARGE DETERMINED AS PROVIDED IN THIS SECTION 7.

FOR EACH MONTHLY PERIOD, THE CITY SHALL SUBMIT A WRITTEN REPORT TO THE DISTRICT SETTING FORTH:

1. THE TOTAL NUMBER OF ALL CUSTOMERS BILLED FOR LOCAL SEWERAGE CHARGES BY THE CITY AS OF THE LAST DAY OF THE MONTH,
2. THE TOTAL NUMBER OF SINGLE FAMILY RESIDENTIAL CUSTOMERS BILLED BY THE CITY FOR SEWERAGE CHARGES AS OF THE LAST DAY OF THE MONTH, EACH OF WHICH SHALL COUNT AS ONE EQUIVALENT RESIDENTIAL USER,
3. THE ADJUSTED TOTAL WATER CONSUMPTION DURING SUCH MONTH FOR ALL CUSTOMERS BILLED FOR LOCAL SEWERAGE CHARGES BY THE CITY OTHER THAN SINGLE FAMILY RESIDENTIAL CUSTOMERS. SUCH WATER CONSUMPTION SHALL BE TAKEN FROM WATER METER RECORDS AND MAY BE ADJUSTED TO EXCLUDE WATER WHICH DOES NOT ENTER THE SANITARY FACILITIES OF THE CUSTOMER. WHERE ACTUAL SEWAGE FLOW FROM AN INDIVIDUAL CUSTOMER IS METERED, THE METERED SEWAGE FLOWS SHALL BE REPORTED IN LIEU OF ADJUSTED WATER CONSUMPTION. THE TOTAL MONTHLY ADJUSTED WATER CONSUMPTION REPORT IN CUBIC FEET SHALL BE DIVIDED BY 900 TO DETERMINE THE NUMBER OF EQUIVALENT RESIDENTIAL USERS REPRESENTED BY EACH CITY CUSTOMER OTHER THAN SINGLE FAMILY RESIDENCES,
4. THE CITY SHALL REPORT THE TOTAL CALCULATED NUMBER OF EQUIVALENT RESIDENTIAL USERS AGAINST WHICH THE DISTRICT'S EQUIVALENT RESIDENTIAL USER PUMPED CONVEYANCE CHARGE SHALL BE APPLIED TO DETERMINE THE MONTHLY AMOUNT DUE TO THE DISTRICT,

5. THIS METHOD FOR DETERMINING THE NUMBER OF EQUIVALENT RESIDENTIAL USERS SHALL BE MODIFIED AS REQUIRED OVER TIME TO REFLECT THE THEN IN-PLACE METRO METHODOLOGY.

THE DISTRICT'S PUMPED CONVEYANCE CHARGES TO THE CITY, WHICH SHALL COMMENCE IMMEDIATELY UPON THE CITY INITIATING CONVEYANCE OF WASTEWATER FLOW TO THE DISTRICT, SHALL NOT EXCEED ONE DOLLAR AND EIGHTY FIVE CENTS (\$1.85) PER MONTH (1990 DOLLARS) PER EQUIVALENT RESIDENTIAL USER. THE DISTRICT AGREES THAT THIS CONVEYANCE CHARGE SHALL NOT INCREASE AT MORE THAN FOUR PERCENT (4%) PER YEAR FOR A PERIOD OF TWENTY (20) YEARS FOR USE OF EXISTING DISTRICT, KENT, AND MILL CREEK FACILITIES. THE DISTRICT FURTHER AGREES TO NOTIFY THE CITY SIXTY (60) CALENDAR DAYS IN ADVANCE OF ANY DISTRICT EQUIVALENT RESIDENTIAL USER CONVEYANCE CHARGE CHANGES TO ALLOW THE CITY TIME FOR ANY FORMAL MODIFICATION OF THE CITY'S SEWER ORDINANCE.

THE DISTRICT PUMPED CONVEYANCE CHARGES TO THE CITY, FOR CONVEYANCE OF CITY WASTEWATER FLOWS THROUGH THE DISTRICT, KENT, AND MILL CREEK SYSTEMS TO THE METRO SYSTEM, SHALL INCLUDE DISTRICT OPERATION AND MAINTENANCE COSTS, INCLUDING REPLACEMENT PARTS COSTS, ONLY FOR THE PUMPED CONVEYANCE FACILITIES UTILIZED BY THE CITY AND SHALL ALSO INCLUDE DISTRICT OVERHEAD COSTS APPROPRIATELY AND ONLY ASSOCIATED WITH PROVIDING PUMPED CONVEYANCE TO THE CITY.

AFTER TWENTY (20) YEARS HAVE EXPIRED FOR UTILIZATION OF EXISTING DISTRICT, KENT, AND MILL CREEK CONVEYANCE SYSTEMS FOR CITY FLOWS, OR IMMEDIATELY UPON COMMENCEMENT OF OPERATION FOR THOSE SEGMENTS OF THE DISTRICT, KENT, AND MILL CREEK SYSTEMS WHICH HAVE UNDERGONE A CONVEYANCE CAPACITY UPGRADE, THE CITY SHALL COMMENCE PAYING THE DISTRICT ON THE BASIS OF A STRICT APPROPRIATE SHARE OF DISTRICT OPERATION AND MAINTENANCE COSTS, INCLUDING REPLACEMENT PARTS COSTS, AND A STRICT APPROPRIATE SHARE OF DISTRICT OVERHEAD COSTS, RELATED ONLY TO THE DISTRICT'S PUMPED CONVEYANCE FACILITIES UTILIZED BY THE CITY.

SHOULD THE CITY'S VOLUME OF WASTEWATER FLOW RECEIVED AT THE DISTRICT'S PUMP STATION NUMBER 11 EXCEED THE EPA STANDARDS FOR NUMBER OF CONNECTIONS, INCLUDING EPA SERVICE AREA AND PIPELINE ALLOWANCES FOR INFILTRATION AND INFLOW (I&I), THEN THE CITY SHALL

PAY THE DISTRICT AN ADDITIONAL MONTHLY SERVICE CHARGE BASED ON THE ADDITIONAL MINIMUM NUMBER OF EQUIVALENT RESIDENTIAL USERS AS WOULD BE REQUIRED TO GENERATE THE EXCESSIVE FLOW MEASURED, IF THE CITY WERE MEETING THE EPA MAXIMUM VOLUME OF FLOW STANDARDS, AND AT THE EQUIVALENT RESIDENTIAL USER RATES AS DEFINED IN THIS SECTION 7.

FOR AS LONG AS THE EXISTING DISTRICT, KENT, AND MILL CREEK CONVEYANCE FACILITIES REMAIN OPERATIONAL, AND FOR AS LONG AS FUTURE CAPITAL COST CONVEYANCE CAPACITY UPGRADES REMAIN OPERATIONAL IN THE DISTRICT, KENT, AND MILL CREEK SYSTEMS, WHERE THE CITY PROVIDES CAPITAL COST FUNDING FOR THE CITY'S SHARE OF DESIGN AND CONSTRUCTION COSTS, THE DISTRICT SHALL NOT INCLUDE ANY CAPITAL COST OR BOND OR OTHER INDEBTEDNESS IN ITS CONVEYANCE CHARGES TO THE CITY. WHERE PORTIONS OF THE ABOVE CONVEYANCE CAPACITY UPGRADES MUST BE REPLACED, AT SOME TIME IN THE DISTANT FUTURE, THE CITY SHALL BE OBLIGATED TO PROVIDE FUNDING FOR SUCH REPLACEMENT BASED ON THE CITY'S PROPORTIONAL SHARE OF CONVEYANCE CAPACITY IN SUCH REPLACEMENT SYSTEMS.

THE DISTRICT SHALL NOT INVOICE THE CITY FOR ANY METRO CHARGES TO THE DISTRICT. THE CITY SHALL EXECUTE A SEPARATE AGREEMENT WITH METRO AND ALL METRO SERVICE CHARGES RELATED TO CITY WASTEWATER FLOWS SHALL BE PAID BY THE CITY DIRECTLY TO METRO. THE DISTRICT SHALL BE COPIED WITH THE CITY'S METRO INVOICES.

THE CITY SHALL TAKE SUCH STEPS AS NECESSARY AND AGREES TO MODIFY THE CITY'S SEWER RATE ORDINANCE AS REQUIRED TO INSURE THAT THE CITY FULFILLS ITS PAYMENT OBLIGATIONS TO THE DISTRICT IN A TIMELY MANNER, REGARDLESS OF THE STATUS OF PAYMENTS MADE TO THE CITY BY ITS CUSTOMERS.

SECTION 8. CAPITAL COST FUNDING FOR FUTURE DISTRICT, KENT, AND MILL CREEK CONVEYANCE CAPACITY UPGRADES. WHEN IT BECOMES NECESSARY FOR THE DISTRICT TO PROVIDE FOR CONVEYANCE CAPACITY UPGRADES, AS NEW CONSTRUCTED CONVEYANCE FACILITIES, IN THE DISTRICT, KENT, AND MILL CREEK SYSTEMS, THE CITY SHALL PARTICIPATE IN FUNDING THE DISTRICT'S CAPITAL COSTS OF DESIGN AND CONSTRUCTION OF THOSE NEW CONVEYANCE FACILITIES BASED ON THE RATIO OF THE DESIGNED PEAK CONVEYANCE CAPACITY RESERVED FOR CITY FLOWS TO THE TOTAL DESIGNED PEAK CONVEYANCE CAPACITY OF THE NEW

CONVEYANCE FACILITIES. THE CITY SHALL PROVIDE CAPITAL COST FUNDING FROM THE JOINTLY CONTROLLED BUY-IN INVESTMENT ACCOUNT FOR SUCH NEW DISTRICT CONVEYANCE FACILITIES TO PROVIDE CONVEYANCE FOR A MINIMUM CITY DESIGN POPULATION OF 3600; HOWEVER, THE CITY MAY UNILATERALLY DETERMINE TO INCREASE THE PEAK CONVEYANCE CAPACITY RESERVED FOR CITY FLOWS ON THE CONDITION THAT THE CITY PROVIDE ADDITIONAL CAPITAL COST FUNDING TO COMPLY WITH THE FUNDING RATIO REQUIREMENT.

IT HAS BEEN DETERMINED THAT WDOE WILL PROVIDE GRANT FUNDING IN THE AMOUNT OF \$1,983,000 (1 SEP 90 DOLLARS) TO THE CITY TO SUPPORT FUTURE CONVEYANCE CAPACITY UPGRADES WITHIN THE DISTRICT, KENT, AND MILL CREEK SYSTEMS TO PROVIDE FOR CONVEYANCE OF CITY FLOWS OF 3600 POPULATION, UNDER THE WDOE/EPA REPLACEMENT GRANT PROCESS. IN ADDITION, INCREASES IN THE PRESENT WORTH COSTS OF THE DISTRICT'S FUTURE CONVEYANCE CAPACITY UPGRADES, DUE TO THE IMPACT OF CITY WASTEWATER FLOWS ACCELERATING IMPLEMENTATION OF THESE CONVEYANCE CAPACITY UPGRADES, IS ALSO IDENTIFIED AND FUNDED UNDER THIS WDOE GRANT. AS A RESULT OF WDOE REGULATIONS, THIS GRANT FUNDING MUST BE IDENTIFIED AND TRANSACTED BETWEEN THE DISTRICT AND CITY AS WDOE GRANT FUNDING REIMBURSEMENT PAYMENTS FOR A CITY CAPITAL COST BUY-IN TO THE DISTRICT FACILITIES.

THE \$1,983,000 (1 SEP 90 DOLLARS) IN WDOE FUNDING RESULTS FROM A PRESENT WORTH CALCULATION OF THE CITY'S COST SHARE TO PROVIDE FOR CITY CONVEYANCE CAPACITY IN THE DISTRICT'S FUTURE CONVEYANCE CAPACITY UPGRADES CAPITAL COSTS AND HAS BEEN ESTIMATED BY REDUCING THE ESTIMATED FUTURE DISTRICT, KENT, AND MILL CREEK CONVEYANCE CAPACITY UPGRADES CAPITAL COSTS, AT THE ESTIMATED ACTUAL TIMES OF CONSTRUCTION, AT THE EPA MANDATED DISCOUNT RATE OF EIGHT AND FIVE EIGHTHS PERCENT (8.625%) PER YEAR TO 1 SEP 90. TO PROVIDE ADEQUATE MONIES FOR THE FUTURE CONSTRUCTION AND TO PROTECT THE INTERESTS OF BOTH PARTIES, THE WDOE \$1,983,000 PRESENT WORTH BUY-IN GRANT REIMBURSEMENT PAYMENT SHALL BE MADE PAYABLE TO A CITY AND DISTRICT JOINTLY CONTROLLED INTEREST BEARING BUY-IN INVESTMENT ACCOUNT.

PRIOR TO ACTUAL RECEIPT OF THE WDOE BUY-IN GRANT PAYMENT, THE DISTRICT AND CITY GOVERNING BODIES SHALL ACT FORMALLY

TO SELECT AND ENACT A JOINTLY CONTROLLED BUY-IN INVESTMENT ACCOUNT. THESE JOINTLY CONTROLLED MONIES SHALL BE UTILIZED TO FUND BOTH THE DISTRICT'S INCREASED PRESENT WORTH COSTS AND THE CITY'S PROPORTIONAL SHARE OF THE CAPITAL COSTS OF DESIGN AND CONSTRUCTION OF FUTURE CONVEYANCE CAPACITY UPGRADES IN THE DISTRICT, KENT, AND MILL CREEK SYSTEMS. SUCH MONIES SHALL BE RELEASED FROM THE JOINTLY CONTROLLED BUY-IN INVESTMENT ACCOUNT ONLY UPON FORMAL AUTHORIZATION AND JOINT SIGNATURE BY BOTH DISTRICT AND CITY GOVERNING BODIES.

IN ANY CASE, AND REGARDLESS OF THE FISCAL STATUS OF THE JOINTLY CONTROLLED BUY-IN INVESTMENT ACCOUNT, THE CITY SHALL BE FULLY AND UNILATERALLY RESPONSIBLE FOR OBTAINING AND/OR PROVIDING ADEQUATE AND TIMELY CAPITAL COST FUNDING TO THAT JOINTLY CONTROLLED BUY-IN INVESTMENT ACCOUNT TO FULFILL THE CITY'S FINANCIAL OBLIGATIONS TO THE DISTRICT TO SUPPORT THE CITY'S PROPORTIONAL SHARE OF CAPITAL COSTS FOR FUTURE CONVEYANCE CAPACITY UPGRADES FOR THE CONVEYANCE OF CITY FLOWS THROUGH THE DISTRICT, KENT, AND MILL CREEK SYSTEMS. ANY MONIES REMAINING IN THIS JOINTLY CONTROLLED BUY-IN INVESTMENT ACCOUNT AFTER COMPLETION OF ALL CONVEYANCE CAPACITY UPGRADES SHALL BE RETURNED TO THE CITY UNDER JOINT SIGNATURE OF THE CITY AND DISTRICT.

IN LIEU OF NORMAL DISTRICT NEW SERVICE AREA CHARGES, AND IN RECOGNITION OF THE SPECIAL CASE OF THE CITY WHICH IS A SEPARATE LOCAL SEWER SERVICE AREA ENTITY WHICH ONLY REQUIRES WASTEWATER CONVEYANCE (NOT COLLECTION) THROUGH THE DISTRICT, KENT, AND MILL CREEK SYSTEMS TO THE METRO SYSTEM, THE DISTRICT SHALL INVOICE THE \$1,983,000 (1 SEP 90 DOLLARS) BUY-IN AMOUNT TO THE CITY, TO BE MADE PAYABLE TO THE JOINTLY CONTROLLED BUY-IN INVESTMENT ACCOUNT; AND THE DISTRICT SHALL ACCEPT THE RECEIPT OF AND MAKE DEPOSIT OF A WDOE FUNDED BUY-IN GRANT REIMBURSEMENT PAYMENT OF \$1,983,000 TO THE CITY AND DISTRICT JOINTLY CONTROLLED BUY-IN INVESTMENT ACCOUNT.

SHOULD THE CITY FAIL TO COMPLETE CONSTRUCTION AND COMMENCE OPERATION OF THE CITY'S PUMP STATION AND PIPELINE TO THE DISTRICT, THEN ALL WDOE GRANT FUNDED MONIES DEPOSITED TO THE JOINTLY CONTROLLED BUY-IN INVESTMENT ACCOUNT SHALL BE RETURNED TO THE CITY, UNDER DISTRICT AND CITY JOINT SIGNATURE, FOR THE CITY'S

RETURN TO WDOE.

SECTION 9. CITY FUNDING OF INCREASED PRESENT WORTH COSTS FOR FUTURE DISTRICT CONVEYANCE CAPACITY UPGRADES. THE CITY RECOGNIZES THAT THE INCLUSION OF CITY WASTEWATER FLOWS INTO THE DISTRICT'S EXISTING SYSTEM TO METRO WILL ACCELERATE THE NEED FOR THE DISTRICT TO EMBARK UPON FUTURE PLANNED CONVEYANCE CAPACITY UPGRADES. THE DISTRICT AND THE CITY AGREE THAT THIS ACCELERATION INCREASES THE PRESENT WORTH COSTS OF THE DISTRICT'S CONVEYANCE CAPACITY UPGRADES AS FOLLOWS:

DISTRICT CONVEYANCE CAPACITY UPGRADE	RESERVED FUNDS
1. DISTRICT PUMP STATION #11 PUMP REPLACEMENT	\$ 12,977
2. DISTRICT CONVEYANCE PS #11 TO PS #10	\$ 282,593
3. DISTRICT PUMP STATION #10 PUMP REPLACEMENT	\$ 12,977
4. DISTRICT CONVEYANCE PS #10 TO KENT	\$ 146,754
5. KENT PIPELINE (NEW PIPELINE)	\$ 0
(ESTIMATED AS SERVING ONLY CITY CAPACITY NEEDS)	
6. MILL CREEK INTERCEPTOR	\$ 0
(CONSTRUCTION NOT ACCELERATED BY CITY FLOWS)	=====
TOTAL	\$ 455,301

THESE AMOUNTS ARE CALCULATED IN 1 SEP 90 DOLLARS, AND SHALL BE RESERVED IN THE JOINTLY CONTROLLED BUY-IN INVESTMENT ACCOUNT AND SHALL ACCRUE INTEREST, AS WILL ALL INVESTMENT FUNDS. THE INDIVIDUAL AMOUNTS ACCRUED, AT THE ACTUAL TIME OF CONSTRUCTION OF THE INDIVIDUAL CONVEYANCE CAPACITY UPGRADES INDICATED, SHALL BE APPLIED TO THE COST OF CONSTRUCTION FOR THAT INDIVIDUAL CONVEYANCE CAPACITY UPGRADE TO REDUCE THE RESULTING PROPORTIONAL COST SHARES OF THE DISTRICT AND THE CITY IN THAT INDIVIDUAL CONVEYANCE CAPACITY UPGRADE PROJECT COST. THESE MONIES SHALL BE RELEASED FROM THE JOINTLY CONTROLLED BUY-IN INVESTMENT ACCOUNT ONLY IN ACCORDANCE WITH "SECTION 8. CAPITAL COST FUNDING FOR FUTURE DISTRICT/KENT/MILL CREEK CONVEYANCE CAPACITY UPGRADES".

SECTION 10. WDOE/EPA GRANT CONDITIONS. THIS INTERLOCAL AGREEMENT IS SUBJECT TO WDOE/EPA APPROVAL, PRIOR TO WDOE/EPA AUTHORIZING CONSTRUCTION OF THE CITY'S PUMP STATION AND PIPELINE TO THE DISTRICT.

THE CITY/DISTRICT INTERLOCAL AGREEMENT SHALL COMPLY WITH WDOE/EPA GRANT CONDITIONS WHICH ARE HEREBY INCORPORATED INTO THIS AGREEMENT BY ATTACHMENT AS EXHIBIT A (EPA GRANT CONDITIONS) AND EXHIBIT B (WDOE GRANT CONDITIONS).

SECTION 11. INSURANCE AND LIABILITY FOR DAMAGES. BOTH PARTIES TO THIS AGREEMENT SHALL SECURE AND MAINTAIN WITH RESPONSIBLE INSURERS ALL SUCH INSURANCE AS IS CUSTOMARILY MAINTAINED WITH RESPECT TO SEWAGE SYSTEMS OF LIKE CHARACTER AGAINST LOSS OF OR DAMAGE TO THE SEWERAGE FACILITIES OF THE PARTIES AND AGAINST PUBLIC AND OTHER LIABILITY TO THE EXTENT THAT SUCH INSURANCE CAN BE SECURED AND MAINTAINED AT A REASONABLE COST. ANY LIABILITY INCURRED BY THE DISTRICT AS A RESULT OF THE OPERATION OF OR DESIGN AND CONSTRUCTION OF CONVEYANCE FACILITIES TO PROVIDE FOR CONVEYANCE OF CITY WASTEWATER FLOWS SHALL BE THE SOLE LIABILITY OF THE DISTRICT AND ANY LIABILITY INCURRED BY THE CITY AS A RESULT OF THE OPERATION OR DESIGN AND CONSTRUCTION OF LOCAL SEWERAGE COLLECTION AND CONVEYANCE FACILITIES OF THE CITY SHALL BE THE SOLE RESPONSIBILITY OF THE CITY.

SECTION 12. NOTICE. WHENEVER IN THIS AGREEMENT NOTICE IS REQUIRED TO BE GIVEN, THE SAME SHALL BE GIVEN BY REGISTERED MAIL ADDRESSED TO THE RESPECTIVE PARTIES AT THE FOLLOWING ADDRESSES:

CITY OF BLACK DIAMOND
25510 LAWSON STREET
BLACK DIAMOND, WASHINGTON 98010

SOOS CREEK WATER AND SEWER DISTRICT
14616 SE 192ND
RENTON, WASHINGTON 98058

UNLESS A DIFFERENT ADDRESS SHALL BE HEREAFTER DESIGNATED IN WRITING BY EITHER OF THE PARTIES. THE DATE OF GIVING SUCH NOTICE SHALL BE DEEMED TO BE THE DATE OF MAILING THEREOF. BILLINGS FOR AND PAYMENTS OF WASTEWATER CONVEYANCE CHARGES MAY BE MADE BY REGULAR MAIL.

SECTION 13. EFFECTIVE DATE. THIS AGREEMENT SHALL BE IN FULL FORCE AND EFFECT AND BINDING UPON THE PARTIES HERETO UPON EXECUTION OF THIS AGREEMENT.

SECTION 14. EXECUTION OF DOCUMENTS. THIS AGREEMENT SHALL BE EXECUTED IN TWO COUNTERPARTS, ANY OF WHICH SHALL BE REGARDED FOR ALL PURPOSES AS ONE ORIGINAL. EACH PARTY AGREES THAT IT WILL EXECUTE ANY AND ALL DEEDS, INSTRUMENTS, DOCUMENTS, AND RESOLUTIONS OR ORDINANCES NECESSARY TO GIVE EFFECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

SECTION 15. WAIVER. NO WAIVER BY EITHER PARTY OF ANY TERM OR CONDITION OF THIS AGREEMENT SHALL BE DEEMED OR CONSTRUED AS A WAIVER OF ANY OTHER TERM OR CONDITION, NOR SHALL A WAIVER OF ANY BREACH BE DEEMED TO CONSTITUTE A WAIVER OF ANY SUBSEQUENT BREACH WHETHER OF THE SAME OR A DIFFERENT PROVISION OF THIS AGREEMENT.

SECTION 16. SEVERABILITY. IF ANY PORTION OR PROVISION OF THIS AGREEMENT IS HELD INVALID, THE REMAINDER OF THE AGREEMENT SHALL NOT BE AFFECTED AND WILL CONTINUE IN FULL FORCE AND EFFECT.

SECTION 17. REMEDIES. IN ADDITION TO THE REMEDIES PROVIDED BY LAW, THIS AGREEMENT SHALL BE SPECIFICALLY ENFORCEABLE BY EITHER PARTY.

SECTION 18. ASSIGNMENT. THE PARTIES SHALL NOT HAVE THE RIGHT TO ASSIGN THIS AGREEMENT OR ANY OF ITS RIGHTS AND OBLIGATIONS HEREUNDER EITHER BY OPERATION OF LAW OR BY VOLUNTARY AGREEMENT WITHOUT THE WRITTEN CONSENT OF THE OTHER PARTY AND NEITHER MAY TERMINATE ITS OBLIGATIONS HEREUNDER BY DISSOLUTION OR OTHERWISE WITHOUT FIRST SECURING THE WRITTEN CONSENT OF THE OTHER PARTY AND THIS AGREEMENT SHALL BE BINDING UPON AND INURE TO THE BENEFIT OF THE RESPECTIVE SUCCESSORS AND ASSIGNS OF THE PARTIES THERETO.

IN THE EVENT THAT THE CITY SHOULD BE DISSOLVED OR SHOULD NO LONGER BE AUTHORIZED TO OPERATE SEWER FACILITIES, THE LOCAL SEWERAGE FACILITIES OWNED AND OPERATED BY THE CITY SHALL BE ASSIGNED AND TRANSFERRED TO METRO UNDER A SEPARATE AGREEMENT BETWEEN THE CITY AND METRO.

SECTION 19. ENTIRETY. THIS AGREEMENT MERGES AND SUPERSEDES ALL PRIOR NEGOTIATIONS, REPRESENTATIONS, AND AGREEMENTS BETWEEN THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF AND CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO SUBSEQUENT MODIFICATION OR AMENDMENT OF THIS AGREEMENT SHALL BE OF ANY FORCE OR EFFECT UNLESS IN WRITING, FORMALLY ACTED UPON AND EXECUTED BY THE GOVERNING BODIES OF THE PARTIES THERETO.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE HEREUNTO SET THEIR
HANDS AND SEALS.

CITY OF BLACK DIAMOND

ACCEPTED AND EXECUTED THIS 5TH DAY OF SEPTEMBER, 1990

BY AND FOR THE CITY, SIGNED: Howard Botts
HOWARD BOTTS, MAYOR

ATTEST:

Karen Giesen
KAREN GIESEN, CITY CLERK
CITY OF BLACK DIAMOND

SOOS CREEK WATER & SEWER DISTRICT

ACCEPTED AND EXECUTED THIS 23 DAY OF August, 1990

BY AND FOR THE DISTRICT, SIGNED: [Signature]

BY AND FOR THE DISTRICT, SIGNED: Emilio Pierotti

ATTEST:

Karen Webster
SECRETARY, BOARD OF COMMISSIONERS
SOOS CREEK WATER & SEWER DISTRICT

EXHIBIT A

ENVIRONMENTAL PROTECTION AGENCY

GRANT CONDITIONS FOR A

BLACK DIAMOND WASTEWATER PIPELINE

TO THE METRO SYSTEM VIA

SOOS CREEK WATER & SEWER DISTRICT

U.S. ENVIRONMENTAL PROTECTION AGENCY EPA ASSISTANCE AGREEMENT/AMENDMENT PART I - ASSISTANCE NOTIFICATION INFORMATION		1. ASSISTANCE ID NO. C-5. 22-03-21	2. LOG NUMBER TEN-C-71
		3. DATE OF AWARD 09/28/89	4. MAILING DATE 10/05/89
5. AGREEMENT TYPE <input type="checkbox"/> Operative Agreement <input type="checkbox"/> Grant Agreement <input checked="" type="checkbox"/> Assistance Amendment		6. PAYMENT METHOD <input type="checkbox"/> Advance <input checked="" type="checkbox"/> Reimbursement <input type="checkbox"/> Letter of Credit Send Payment Request To: See previous guidance	
		7. TYPE OF ACTION Increase	
RECIPIENT ORGANIZATION	8. RECIPIENT City of Black Diamond P.O. Box 599 Black Diamond, Washington 98010		9. PAYEE City of Black Diamond P.O. Box 599 Black Diamond, Washington 98010
	EIN NO. 91-6016204	CONGRESSIONAL DISTRICT 3	10. RECIPIENT TYPE Municipal
	11. PROJECT MANAGER AND TELEPHONE NO. Howard Botts, Mayor Bill Lee, Project Officer (206) 643-4565		12. CONSULTANT (WWT Construction Grants Only) Brown and Caldwell 100 West Harrison Seattle, Washington 98119 (206) 281-4000
EPA CONTACT	13. ISSUING OFFICE (City/State) Region 10 Seattle, Washington 98101		14. EPA PROJECT/STATE OFFICER AND TELEPHONE NO. Doug Peters, Project Officer Washington Department of Ecology M/S PV-11 Olympia, Washington 98504-8711 (206) 459-6095
	15. EPA CONGRESSIONAL LIAISON & TEL. NO. Pat Gaskins (202) 382-5184	16. STATE APPL ID (Clearinghouse) 26750832	17. FIELD OF SCIENCE 44
19. STATUTORY AUTHORITY PL 92-500; PL 95-217; PL 97-117; PL 99-349		20. REGULATORY AUTHORITY 40 CFR 30, 33, 35	
21. STEP 2 + 3 & STEP 3 (WWT Construction Only)			
		a. Treatment Level	N/A N/A
		b. Project Type	N/A N/A
		c. Treatment Process	N/A N/A
		d. Sludge Design	N/A N/A
22. PROJECT TITLE AND DESCRIPTION Modification or replacement grant of an Innovative (I/A) failure. This project is a three segmented project for planning, design, and construction. --100% Grant--			
23. PROJECT LOCATION (Area Impacted by Project)			
City/Place Black Diamond	County King	State WA	Congressional District 3
24. ASSISTANCE PROGRAM (CFDA Program No. & Title) 66 418 Construction		25. PROJECT PERIOD N/A	26. BUDGET PERIOD N/A
27. COMMUNITY POPULATION (WWT CG Only) 3,300	28. TOTAL BUDGET PERIOD COST N/A	29. TOTAL PROJECT PERIOD COST N/A	
FUNDS FORMER AWARD THIS ACTION AMENDED TOTAL			
30. EPA Amount This Action		385,686	1,131,933
31. EPA In-Kind Amount		N/A	N/A
32. Unexpended Prior Year Balance		N/A	N/A
33. Other Federal Funds		N/A	N/A
34. Recipient Contribution		N/A	N/A
35. State Contribution		N/A	N/A
36. Local Contribution		N/A	N/A
37. Other Contribution		N/A	N/A
Allowable Project Cost		385,686	1,131,933
39. FISCAL	Program Element GLAW80	FY 84	Obligation/Disbursing Amount 1,131,933
	Appropriation 68X0103.G	Doc Control No D84252	Account Number UGLA104004
			Object Class 41.11

TABLE A - OBJECT CLASS CATEGORY (Non-construction)		TOTAL APPROVED ALLOWABLE BUDGET PERIOD COST
1. PERSONNEL		
2. FRINGE BENEFITS		
3. TRAVEL		
4. EQUIPMENT		
5. SUPPLIES		
6. CONTRACTUAL		
7. CONSTRUCTION		
8. OTHER		
9. TOTAL DIRECT CHARGES		
10. INDIRECT COSTS: RATE % BASE		
11. TOTAL (Share: Recipient: _____% Federal: _____%)		
12. TOTAL APPROVED ASSISTANCE AMOUNT		\$
TABLE B - PROGRAM ELEMENT CLASSIFICATION (Non-construction)		
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12. TOTAL (Share: Recipient: _____% Federal: _____%)		
13. TOTAL APPROVED ASSISTANCE AMOUNT		\$
TABLE C - PROGRAM ELEMENT CLASSIFICATION (Construction)		
1. ADMINISTRATION EXPENSE		121,169
2. PRELIMINARY EXPENSE		
3. LAND STRUCTURES, RIGHT-OF-WAY		
4. ARCHITECTURAL ENGINEERING BASIC FEES		1,217,079
5. OTHER ARCHITECTURAL ENGINEERING FEES		179,373
6. PROJECT INSPECTION FEES		
7. LAND DEVELOPMENT		
8. RELOCATION EXPENSES		
9. RELOCATION PAYMENTS TO INDIVIDUALS AND BUSINESSES		
10. DEMOLITION AND REMOVAL		
11. CONSTRUCTION AND PROJECT IMPROVEMENT		
12. EQUIPMENT		
13. MISCELLANEOUS		
14. TOTAL (Lines 1 thru 13)		1,517,621
15. ESTIMATED INCOME (If applicable)		
16. NET PROJECT AMOUNT (Line 14 minus 15)		
17. LESS: INELIGIBLE EXCLUSIONS		
18. ADD: CONTINGENCIES		
19. TOTAL (Share: Recipient: _____% Federal: <u>100</u> %)		1,517,621
20. TOTAL APPROVED ASSISTANCE AMOUNT		\$ 1,517,621

PART III-AWARD CONDITIONS

a. GENERAL CONDITIONS

The recipient covenants and agrees that it will expeditiously initiate and timely complete the project work for which assistance has been awarded under this agreement, in accordance with all applicable provisions of 40 CFR Chapter I, Subpart B. The recipient warrants, represents, and agrees that it, and its contractors, subcontractors, employees and representatives, will comply with: (1) all applicable provisions of 40 CFR Chapter I, Subchapter B, INCLUDING BUT NOT LIMITED TO the provisions of Appendix A to 40 CFP Part 30, and (2) any special conditions set forth in this assistance agreement or any assistance amendment pursuant to 40 CFR 30.425.

b. SPECIAL CONDITIONS:

(For cooperative agreements include identification or summarization of EPA responsibilities that reflect or contribute to substantial involvement.)

Additional Special Conditions

10. A finding of no significant impact (FONSI) was issued on this grant project in lieu of an environmental impact statement (EIS) with the understanding that the interceptor built with these grant funds would not create significant development pressure along the corridor between Black Diamond's current service area boundary and the connection to pump station #10 at Timberlane in the Soos Creek sewer system. To that end, the city hereby agrees that no entity will be allowed to utilize any capacity in this federally funded interceptor except the users within the Black Diamond sewer service area as it is defined in the May 1989 facility plan, to the saturation density of the current zoning. The interceptor with access so limited will hereinafter be referred to as "tight" or a "tight line."
11. Since it is conceivable that EPA may want to support exceptions to the "tight line" provision for the purpose of protecting water quality or public health, and since EPA does not wish to remain directly involved in future decisions regarding such exceptions, the conditions under which future exceptions to Condition No. 10 above are specified below:
 - A. The city of Black Diamond may allow an entity to connect to the "tight line" and utilize capacity in the "tight line" only if all of the following criteria are met:
 - (1) There is sufficient capacity in the line to accommodate the entity's flows and maintain proper operation of the line.
 - (2) A public health emergency or a severe public health hazard exists, as defined in Paragraph C(1) of Chapters 12, 13, or 14 of the Washington Centennial Clean Water Fund Program Guidelines, April 1989, Publication WDOE 89-14; or the state (or King County) has formally certified that a severe water quality problem exists, and that the problem cannot be corrected through more efficient O&M of the existing wastewater disposal system(s);

a. GENERAL CONDITIONS

The recipient covenants and agrees that it will expeditiously initiate and timely complete the project work for which assistance has been awarded under this agreement, in accordance with all applicable provisions of 40 CFR Chapter I, Subpart B. The recipient warrants, represents, and agrees that it, and its contractors, subcontractors, employees and representatives, will comply with: (1) all applicable provisions of 40 CFR Chapter I, Subchapter B, INCLUDING BUT NOT LIMITED TO the provisions of Appendix A to 40 CFP Part 30, and (2) any special conditions set forth in this assistance agreement or any assistance amendment pursuant to 40 CFR 30.425.

b. SPECIAL CONDITIONS

(For cooperative agreements include identification or summarization of EPA responsibilities that reflect or contribute to substantial involvement.)

- (3) The entity shall gain only that capacity needed to serve the area experiencing the problem under paragraph A2 above, and only to the population in that area that would be allowed under applicable land use plans, zoning requirements and the Sewerage General Plans in existence at the time the problem in paragraph A2 developed.
 - (4) An environmental impact statement or an environment checklist must be prepared on providing the capacity to the entity, according to the rules set forth in the state environmental review process for the state revolving fund developed under Title VI of the Clean Water Act. (Note: There may be state requirements for facility planning and design which the entity must also meet.)
 - (5) The entity must pay the city of Black Diamond for the capacity gained in the line according to paragraph C below.
- B. The City of Black Diamond is not obligated by this condition No. 11 to grant access to any entity.
- C. Payment shall be collected and distributed by the Black Diamond according to the following rules:
- (1) For connections, or increases of allotted capacity, made up through the year 2009:
 - (a) Each entity must make payment to the city according to the formulas in Attachment I prior to the connection or increase of capacity.
 - (b) The city must distribute the collected payment according to the formulas in Attachment I within three months of collection.
 - (2) For connections, or increases of allotted capacity, made after the year 2009, no payment is required; however, if the city elects to collect payment, the payment and distributions must be made in accordance with C1 above.
 - (3) Black Diamond shall not collect more than the payment amounts established in B1 above for capacity in the federally funded line. The city is free to negotiate other cost sharing on other additional facilities, or on changes to the federally funded line made without any federal participation.

A. GENERAL CONDITIONS

The recipient covenants and agrees that it will expeditiously initiate and timely complete the project work for which assistance has been awarded under this agreement, in accordance with all applicable provisions of 40 CFR Chapter I, Subpart B. The recipient warrants, represents, and agrees that it, and its contractors, subcontractors, employees and representatives, will comply with: (1) all applicable provisions of 40 CFR Chapter I, Subchapter B, INCLUDING BUT NOT LIMITED TO the provisions of Appendix A to 40 CFP Part 30, and (2) any special conditions set forth in this assistance agreement or any assistance amendment pursuant to 40 CFR 30.425.

L. SPECIAL CONDITIONS

(For cooperative agreements include identification or summarization of EPA responsibilities that reflect or contribute to substantial involvement.)

D. The following entities are not subject to the restrictions or the payments provisions above:

- (1) Through the year 2003, the saturation population at the 1989 zoning within Black Diamond's 1989 sewer service area boundaries = 5770 population equivalents (PEs); and additions to the Black Diamond sewer service area (where the city owns and operates collection systems), providing the additional PEs are included under the 5770 PE ceiling.
- (2) Any Black Diamond sewer service area (where the city owns and operates collection systems) after the year 2003.

E. The following entities are subject to the restrictions and payment provisions above:

- (1) Black Diamond sewer service area population beyond 5770 PEs, unless they are added after the year 2003.
- (2) Additions to the Black Diamond sewer service area which are not counted under the 5770 PE ceiling, unless they are added after the year 2003.
- (3) Any other municipality, for both new and increased service capacity.

12. If the City of Black Diamond transfers ownership and/or authority for approving connections to the federally funded sewer line, these conditions 10, 11, and 12 continue to apply, and responsibility for carrying out the Black Diamond role in these conditions must be either retained by the city or legally assigned to appropriate parties to carry out.

13. Four abandoned frame structures flank the first 400 feet of the right-of-way extending to the northwest from the new Black Diamond pumping station. They have been identified as being of historic value. If design or construction plans call for their removal, this impact must be mitigated. This would likely entail a photographic record and completion of historic forms. The City of Black Diamond agrees to coordinate exact requirements for such data collection with the Washington Office of Archeology and Historic Preservation, and to notify EPA Region 10 (WQ-136) that such coordination is being undertaken.

PART III - AWARD CONDITIONS

a. GENERAL CONDITIONS:

The recipient covenants and agrees that it will expeditiously initiate and timely complete the project work for which assistance has been awarded under this agreement, in accordance with all applicable provisions of 40 CFR Chapter I, Subpart B. The recipient warrants, represents, and agrees that it, and its contractors, subcontractors, employees and representatives, will comply with: (1) all applicable provisions of 40 CFR Chapter I, Subchapter B, INCLUDING BUT NOT LIMITED TO the provisions of Appendix A to 40 CFP Part 30, and (2) any special conditions set forth in this assistance agreement or any assistance amendment pursuant to 40 CFR 30.425.

b. SPECIAL CONDITIONS:

(For cooperative agreements include identification or summarization of EPA responsibilities that reflect or contribute to substantial involvement.)

14. The City shall comply with all mitigation measures identified in the Federal Environmental Assessment and facility plan.
15. The City shall not proceed with design until funding sources and affordability criteria have been finalized with the exception of aerial photography which was given prior approval.

Please submit a revised payment schedule.

ATTACHMENT I: BLACK DIAMOND GRANT CONDITIONS FORMULAS

DEFINITIONS

Black Diamond population equivalents for which this project was built = 3600

Entity i = an entity requesting a new connection, or an entity requesting increased capacity for previous connection(s).

Ni = Entity population equivalents for the capacity requested by entity i

TC = Total collar cost of the project funded with this grant, including any local or state costs, and including costs for planning, design, and construction (determined at administrative completion of the grant)

TL = Total length of the line funded by this grant (determined when design is complete)

Li = Length of the line from the downstream end where it connects to the Soos Creek sewer system to the point at which the upstream connection for entity i is made, to a maximum of TL

F% = $\frac{\text{Total grant amount}}{TC}$ (determine at administrative completion of grant)

PAYMENT FORMULA

Pi = Amount of payment to be made by entity i to Black Diamond
 = Cost * Proportion of length of line used * Proportion of capacity

requested to capacity

$$= TC * \frac{Li}{TL} * \frac{Ni}{3600 + \sum_{j=1}^{j=i} Nj}$$

DISTRIBUTION FORMULAS

Ii = The portion of Pi which represents the incremental amount in which EPA participated
 = Theoretical payment amount as if all entities gained access as one entity - Sum of all increments to date

$$= \left(TC * \frac{\sum_{j=1}^{j=i} LjNj}{TL * \left(3600 + \sum_{j=1}^{j=i} Nj \right)} \right) - \frac{\sum_{j=1}^{j=i-1} Ij}{j=1}$$

DEFINITIONS (continued)

$F_i = \text{Payment to EPA} = I_i * F\%$

$BD_i = \text{Amount Black Diamond retains (or shares with state, according to arrangements between city and state)}$

$BD_i = I_i * (1.0 - F\%)$

$R_i = \text{Amount to be distributed among all previous entities who have paid such that each entity has paid a proportionate share of the currently allotted capacity}$

$R_i = P_i - I_i$

b. SPECIAL CONDITIONS (Continued)

PART IV

NOTE: The Agreement must be completed in duplicate and the Original returned to the Grants Administration Division for Headquarters awards and to the appropriate Grants Administrations Office for State and local awards within 3 calendar weeks after receipt or within any extension of time as may be granted by EPA.

Receipt of a written refusal or failure to return the properly executed document within the prescribed time, may result in the withdrawal of the offer by the Agency. Any change to the Agreement by the recipient subsequent to the document being signed by the EPA Award Official which the Award Official determines to materially alter the Agreement shall void the Agreement.

OFFER AND ACCEPTANCE

The United States of America, acting by and through the U.S. Environmental Protection Agency (EPA), hereby offers assistance/amendment to the City of Black Diamond

for 100 % of all approved costs incurred up to and not exceeding \$ 1,517,621

for the support of approved budget period effort described in application (including all application modifications) 66.418 Construction 9/4/87 included herein by reference.

ISSUING OFFICE (Grants Administration Office)	AWARD APPROVAL OFFICE
ORGANIZATION/ADDRESS Management Division Grants Administration Section Environmental Protection Agency, MD-100 1200 Sixth Avenue, Seattle, WA. 98101	ORGANIZATION/ADDRESS Regional Administrator Environmental Protection Agency 1200 Sixth Avenue Seattle, Washington 98101

BY THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

SIGNATURE OF AWARD OFFICIAL	TYPED NAME AND TITLE	DATE
	Robie G. Russell, Regional Administrator	SEP 28 1989

This Agreement is subject to applicable U.S. Environmental Protection Agency statutory provisions and assistance regulations. In accepting this award or amendment and any payments made pursuant thereto, (1) the undersigned represents that he is duly authorized to act on behalf of the recipient organization, and (2) the recipient agrees (a) that the award is subject to the applicable provisions of 40 CFR Chapter I, Subchapter B and of the provisions of this agreement (Parts I thru IV), and (b) that acceptance of any payments constitutes an agreement by the payee that the amounts, if any found by EPA to have been overpaid will be refunded or credited in full to EPA.

BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION

SIGNATURE	TYPED NAME AND TITLE	DATE
	Howard A. Smith, Mayor	10-19-89

EXHIBIT B

WASHINGTON STATE

DEPARTMENT OF ECOLOGY

GRANT CONDITIONS FOR A

BLACK DIAMOND BUY-IN GRANT TO

SOOS CREEK WATER & SEWER DISTRICT

WASTEWATER CONVEYANCE FACILITIES

Grant No. WFG 90-017
Water Pollution Control Grant
Grant Agreement with the City of Black Diamond

Referendum 39/26 Fund
Grant Agreement
between
State of Washington Department of Ecology
and
City of Black Diamond

THIS is a binding agreement entered into by and between the State of Washington, Department of Ecology, (Mailstop PV-11, Olympia, Washington 98504), hereinafter referred to as the "DEPARTMENT" and the City of Black Diamond, hereinafter referred to as the "GRANTEE." The purpose of this agreement is to provide funds to the GRANTEE to carry out the activities described herein.

GRANTEE ADDRESS	City of Black Diamond 25510 Lawson Street P. O. Box 599 Black Diamond, Washington 98010
GRANTEE REPRESENTATIVE	Howard Botts
GRANTEE TELEPHONE NUMBER	(206) 886-2560
DEPARTMENT PROJECT OFFICER	Jon K. Peterson
PROJECT OFFICER TELEPHONE NUMBER	(206) 459-6105
FUNDING SOURCE	75 percent Referendum 39 25 percent Referendum 26
TOTAL PROJECT COST	\$1,983,000.00 (September 1, 1990)
TOTAL ELIGIBLE COST	\$1,983,000.00
STATE MAXIMUM GRANT PERCENT	100 percent
STATE GRANT SHARE	\$1,983,000.00
GRANTEE SHARE	\$0

The effective date of this agreement shall be the date this agreement is signed by the Water Quality Financial Assistance Program Manager of the DEPARTMENT. Any work performed prior to the effective date of this agreement without prior written authorization will be at the sole expense and risk of the GRANTEE.

The project described herein must be completed on or before November 30, 1992.

This agreement shall expire no later than December 31, 1992.

Grant No. WFG 90-017
Water Pollution Control Grant
Agreement with City of Black Diamond

PROJECT DESCRIPTION

GRANTEE NAME: City of Black Diamond

PROJECT TITLE: Black Diamond Capacity Buy-In

PROJECT COMPLETION DATE: November 30, 1992

PROJECT EXPIRATION DATE: December 31, 1992

PROJECT DESCRIPTION: This grant is intended to be in conjunction with the GRANTEE'S U.S. Environmental Protection Agency's modification/replacement pipeline project to solve their sewage problem created by their existing failed innovative/alternative wastewater treatment facility. The pipeline will convey the GRANTEE'S wastewater flows to Soos Creek Water and Sewer District pipeline to City of Kent pipeline to the Mill Creek interceptor and finally to the Municipality of Metropolitan Seattle (Metro) for treatment and disposal at Metro's Renton Treatment Plant.

The Scope of Work for this project is: the GRANTEE shall use the funds received from the DEPARTMENT under this agreement to purchase wastewater conveyance capacity rights from Soos Creek Water and Sewer District to convey wastewater flows from the GRANTEE'S system eventually to the Metro system for disposal.

Grant No. WFG 90-017
 Water Pollution Control Grant
 Agreement with City of Black Diamond

	<u>BUDGET</u>	
<u>Major Project Elements</u>	<u>Total Project Cost</u>	<u>*Total Eligible Cost</u>
I. Capacity Buy-In to Soos Creek. Water & Sewer District	\$1,983,000.00	\$1,983,000.00
Total	\$1,983,000.00	\$1,983,000.00
Total Project Cost	\$1,983,000.00	
Total Eligible Cost (TEC)	\$1,983,000.00	
GRANTEE Share	\$0	
DEPARTMENT Share	\$1,983,000.00	

* This project is 100 percent eligible utilizing 75 percent Referendum 39 grant funds for a total of \$1,487,250.00 and 25% Referendum 26 grant funds for a total of \$495,750.00

Grant No. WFG 90-017
Water Pollution Control Grant
Agreement with City of Black Diamond

SPECIAL TERMS AND CONDITIONS

- A. Payment Limits. The total eligible cost for the capacity buy-in of this project is \$1,983,000.00.
- B. Time for Performance. In the event the GRANTEE fails to commence construction of their pipeline project to Soos Creek Water and Sewer District within 24 months after the effective date of this agreement the DEPARTMENT reserves the right to terminate this agreement. In the event of such termination, all grant money including interest accrued shall be returned to the DEPARTMENT.
- C. Interlocal Agreements. The GRANTEE shall submit, prior to grant reimbursement, copies of the final interlocal agreements between:
1) City of Black Diamond and Soos Creek Water and Sewer District, and;
2) City of Black Diamond and the Municipality of Metropolitan Metropolitan Seattle (Metro), for review and approval by the DEPARTMENT.
- D. All Writings Contained Herein. This agreement, consisting of the Coversheet, Scope of Work, Special Terms and Conditions, appended "General Terms and Conditions," and the DEPARTMENT's current edition of "Financial Guideline for Grants Management," contain the entire understanding between the parties, and there are no other understandings or representations set forth or incorporated by reference herein. No subsequent modification(s) or amendment(s) of this agreement shall be of any force or effect unless in writing, signed by authorized representatives of the GRANTEE and DEPARTMENT, and made a part of this agreement; EXCEPT, this in relation to change of the DEPARTMENT's Project Officer or the GRANTEE's Project Coordinator as set forth on the grant coversheet, either party may make such change by sending a letter to that effect without the signature of the other party.

Grant No. WFG 90-017
Water Pollution Control Grant
Agreement with City of Black Diamond

IN WITNESS WHEREOF, the parties hereby execute Grant:

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

CITY OF BLACK DIAMOND

Jon K. Peterson 1/29/90
JON K. PETERSON DATE
PROJECT OFFICER

Howard Botts 1-25-90
HOWARD BOTTS DATE
MAYOR, CITY OF BLACK
DIAMOND

for
Joseph R. Williams 1/30/90
JOSEPH R. WILLIAMS DATE
PROGRAM MANAGER
WATER QUALITY FINANCIAL ASSISTANCE
PROGRAM

Approved as to form this
25 day of JAN, 1990

Approved as to form only
ASSISTANT ATTORNEY GENERAL

Michael J. [Signature]
CITY ATTORNEY

GENERAL TERMS AND CONDITIONS

Pertaining to Grant Agreements of
the Department of Ecology

A. GRANTEE PERFORMANCE

All activities for which grant funds are to be used shall be accomplished by the GRANTEE and GRANTEE's employees. The GRANTEE shall not assign or subcontract performance to others unless specifically authorized in writing by the DEPARTMENT.

B. SUBGRANTEE COMPLIANCE

The GRANTEE must ensure that all subgrantees and contractors comply with the terms and conditions of this agreement.

C. THIRD PARTY BENEFICIARY

The GRANTEE shall ensure that in all subcontracts entered into by the GRANTEE pursuant to this agreement, the state of Washington is named as an express third-party beneficiary of such subcontracts with full rights as such.

D. CONTRACTING FOR SERVICES (BIDDING)

Contracts for construction, purchase of equipment and professional architectural and engineering services shall be awarded through a competitive process, if required by State law. The GRANTEE shall not advertise for bids for construction until receipt of written approval from the DEPARTMENT. No contract shall be awarded or rejected until approved in writing by the DEPARTMENT. GRANTEE shall retain copies of all bids received and contracts awarded, for inspection and use by the DEPARTMENT.

E. ASSIGNMENTS

No right or claim of the GRANTEE arising under this agreement shall be transferred or assigned by the GRANTEE.

F. COMPLIANCE WITH ALL LAWS

1. The GRANTEE shall comply fully with all applicable Federal, State and local laws, orders, regulations and permits.

Prior to commencement of any construction, the GRANTEE shall secure the necessary approvals and permits required by authorities having jurisdiction over the project, provide assurance to the DEPARTMENT that all approvals and permits have been secured, and make copies available to the DEPARTMENT upon request.

2. Discrimination. The DEPARTMENT and the GRANTEE agree to be bound by all Federal and State laws, regulations, and policies against discrimination. The GRANTEE further agrees to affirmatively support the DEPARTMENT's minority contract procurement program to ensure, to the maximum extent possible, the participation of women and minority owned businesses in all subcontracts awarded under this agreement. The GRANTEE shall report to the DEPARTMENT the percent of grant funds available to women or minority owned businesses.

3. Wages And Job Safety. The GRANTEE agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.

4. Industrial Insurance. The GRANTEE certifies full compliance with all applicable state industrial insurance requirements. If the GRANTEE fails to comply with such laws, the DEPARTMENT shall have the right to immediately terminate this agreement for cause as provided in Section K.1, herein.

G. KICKBACKS

The GRANTEE is prohibited from inducing by any means any person employed or otherwise involved in this project to give up any part of the compensation to which he/she is otherwise entitled or, receive any fee, commission or gift in return for award of a subcontract hereunder.

H. AUDITS AND INSPECTIONS

1. The GRANTEE shall maintain complete program and financial records relating to this agreement. All grant records shall be kept in a manner which provides an audit trail for all expenditures. All records shall be kept in a common file to facilitate audits and inspections.

Engineering documentation and field inspection reports of all construction work accomplished under this agreement shall be maintained by the GRANTEE. Such records shall clearly indicate total receipts and expenditures by fund source and object classification.

2. All grant records shall be open for audit or inspection by the DEPARTMENT or by any duly authorized audit representative of the State of Washington for a period of at least three years after the final grant payment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the GRANTEE shall provide clarification and/or make adjustments accordingly.

3. All work performed under this agreement and any equipment purchased, shall be made available to the DEPARTMENT and to any authorized state, federal or local representative for inspection at any time during the course of this agreement and for at least three years following grant termination or dispute resolution hereunder.

- GRANTEE shall meet the provisions of OMB Circular A-128 (Audit of State and Local Governments) or OMB Circular A-110 (Uniform Requirements for Grants to Universities, Hospitals and Other Non-Profit Organizations) if the GRANTEE receives federal funds in excess of \$25,000. The GRANTEE must forward a copy of the state auditor's audit along with the GRANTEE response and the final corrective action plan as approved by the SAO to the DEPARTMENT within ninety (90) days of the date of the audit report.

I. PERFORMANCE REPORTING

The GRANTEE shall submit progress reports to the DEPARTMENT on a quarterly basis or such other schedule as set forth in the Special Conditions. The GRANTEE shall also report in writing to the DEPARTMENT any problems, delays or adverse conditions which will materially affect their ability to meet project objectives, time schedules or project tasks within the established time periods. This disclosure shall be accompanied by a statement of the action taken or proposed and any assistance needed from the DEPARTMENT to resolve the situation.

Quarterly reports shall cover the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be due within twenty (20) days following the end of the quarter being reported.

J. COMPENSATION

- Method of compensation. Payment shall be made on a reimbursable basis at least quarterly and no more often than once per month. Each voucher shall be submitted to the DEPARTMENT along with documentation of the work performed, expenses incurred and the progress of the project. Payments shall be made for each task/phase of the project, or portion thereof, as set out in the Scope of Work when completed by the GRANTEE and certified as satisfactory by the DEPARTMENT. Requests for payment will be submitted by the GRANTEE on State voucher request forms provided by the DEPARTMENT.

The voucher request form and supportive documents must itemize all allowable costs by major elements as described in the Scope of Work. Instructions for submitting the State voucher request form are found in "Financial Guidelines for Grants Management," chapter 6, published by the DEPARTMENT. A copy of this guideline shall be furnished to the GRANTEE. When voucher requests are approved by the DEPARTMENT, payments will be made to the mutually agreed upon designee.

Payment requests shall be submitted to the DEPARTMENT and directed to the Project Officer assigned to administer this agreement.

- Budget deviation. Deviations in budget amounts may be allowed, with prior approval from the DEPARTMENT. Payment by the DEPARTMENT for project tasks described in the Scope of Work will be disallowed when the GRANTEE's request for reimbursement exceeds the State maximum cost share amount for that task by more than ten percent (10%) when multiplied by the appropriate cost share rate. Despite the foregoing, in no event will the DEPARTMENT provide reimbursement in excess of the DEPARTMENT's grant share of the total eligible cost without a written amendment to this agreement.
- Period of Compensation. Grant payments shall only be made for action of the GRANTEE pursuant to the grant agreement and performed within the effective dates of this agreement unless those dates are specifically modified in writing as provided herein.
- Final Request(s) for Payment. The GRANTEE must submit final requests for compensation within forty-five (45) days after satisfactory completion of this agreement and within fifteen (15) days after the end of a fiscal biennium. Failure to comply may result in delayed reimbursement.
- Performance Guarantee. The DEPARTMENT shall withhold an amount not to exceed ten percent (10%) of each reimbursement payment as security for the GRANTEE's performance. Monies withheld by the DEPARTMENT may be paid to the GRANTEE when the project(s) described herein, or a portion thereof, have been completed if in the DEPARTMENT's sole discretion such payment is reasonable and approved according to this agreement and, as appropriate, upon completion of an audit as specified under section J herein.
- Unauthorized Expenditures. All payments to the GRANTEE shall be subject to final audit by the DEPARTMENT and any unauthorized expenditure(s) charged to this grant shall be refunded to the DEPARTMENT by the GRANTEE.
- Mileage and Per Diem. If mileage and per diem are paid to the employees of the GRANTEE or other public entities, it shall not exceed the amount allowed under state regulation.
- Indirect Costs. No reimbursement for indirect costs will be allowed unless provided for and defined in the Scope of Work hereunder.

K. TERMINATION

- For Cause. The obligation of the DEPARTMENT to the GRANTEE is contingent upon satisfactory performance by the GRANTEE of all of its obligations under this agreement. In the event the GRANTEE unjustifiably fails, in the opinion of the DEPARTMENT, to perform any obligation required of it by this agreement, the DEPARTMENT may refuse to pay any further funds thereunder and/or terminate this agreement by giving written notice of termination.

A written notice of termination shall be given at least five working days prior to the effective date of termination. In that event, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the GRANTEE under this agreement, at the option of the DEPARTMENT, shall become its property.

and the GRANTEE shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Despite the above, the GRANTEE shall not be relieved of any liability to the DEPARTMENT for damages sustained by the DEPARTMENT and/or the State of Washington because of any breach of agreement by the GRANTEE. The DEPARTMENT may withhold payments for the purpose of setoff until such time as the exact amount of damages due the DEPARTMENT from the GRANTEE is determined.

2. Insufficient Funds. The obligation of the DEPARTMENT to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. When this agreement crosses over state fiscal years the obligation of the DEPARTMENT is contingent upon the appropriation of funds during the next fiscal year. The failure to appropriate or allot such funds shall be good cause to terminate this agreement as provided in paragraph K.1 above.
3. Failure to Commence Work. In the event the GRANTEE fails to commence work on the project funded herein within four months after the effective date of this agreement, or by any date mutually agreed upon in writing for commencement of work, the DEPARTMENT reserves the right to terminate this agreement.
4. Waiver. Waiver of any GRANTEE default is not a waiver of any subsequent default. Waiver of a breach of any provision of this agreement is not a waiver of any subsequent breach and will not be construed as a modification of the terms of this agreement unless stated as such in writing by the authorized representative of the DEPARTMENT.

L. PROPERTY RIGHTS

1. Copyrights and Patents. When the GRANTEE creates any copyrightable materials or invents any patentable property, the GRANTEE may copyright or patent the same but the DEPARTMENT retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes.

Where federal funding is involved, the federal government has a proprietary interest in patent rights to any inventions that may be developed by the GRANTEE. As such, the federal grantor agency, in the absence of legislation otherwise, will allocate patent rights in accordance with the memorandum and statement of government patent policy (36 F.R. 16887-16892) issued by the President on August 23, 1971.

2. Publications. When the GRANTEE or persons employed by the GRANTEE use or publish information of the DEPARTMENT; present papers, lectures, or seminars involving information supplied by the DEPARTMENT; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to the DEPARTMENT.
3. Tangible Property Rights. The DEPARTMENT's current edition of "Financial Guidelines for Grants Management," chapter 4, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by the DEPARTMENT in the absence of state, federal statute(s), regulation(s), or policy(s) to the contrary or upon specific instructions with respect thereto in the Scope of Work.
4. Personal Property Furnished by the DEPARTMENT. When the DEPARTMENT provides personal property with an acquisition cost of \$300.00 or more per unit and a useful life of more than three years, directly to the GRANTEE for use in performance of the project, it shall be returned to the DEPARTMENT prior to final payment by the DEPARTMENT. The GRANTEE shall make payment in cash or by setoff to the DEPARTMENT for use of such property. If said property is lost, stolen or damaged while in the GRANTEE's possession, the DEPARTMENT shall be reimbursed in cash or by setoff by the GRANTEE for the fair market value of such property.
5. Acquisition Projects. The following provisions shall apply if the project covered by this agreement includes funds for the acquisition of land or facilities:
 - a. Prior to disbursement of funds provided for in this agreement, the GRANTEE shall establish that the cost of land/or facilities is fair and reasonable.
 - b. The GRANTEE shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses contemplated by this agreement.
6. Conversions. Regardless of the contract termination date shown on the cover sheet, the GRANTEE shall not at any time convert any equipment, property or facility acquired or developed pursuant to this agreement to uses other than those for which assistance was originally approved without prior written approval of the DEPARTMENT. Such approval may be conditioned upon payment to the DEPARTMENT of that portion of the proceeds of the sale, lease or other conversion or encumbrance which monies granted pursuant to this agreement bear to the total acquisition, purchase or construction costs of such property.

M. RECOVERY OF PAYMENTS TO GRANTEE

The right of the GRANTEE to retain monies paid to it as reimbursement payments is contingent upon satisfactory performance of this agreement including the satisfactory completion of the project described in the Scope of Work. In the event the GRANTEE fails, for any reason, to perform obligations required of it by this agreement, the GRANTEE may, at the DEPARTMENT's sole discretion, be required to repay to the DEPARTMENT all grant funds disbursed to the GRANTEE for those parts of the project that are rendered worthless in the opinion of the DEPARTMENT by such failure to perform.

Interest shall accrue at the rate of twelve percent (12%) per annum from the time the DEPARTMENT demands repayment of funds. If payments have been discontinued by the DEPARTMENT due to insufficient funds as in Section K.2 above, the GRANTEE shall not be obligated to repay monies which had been paid to the GRANTEE prior to such termination. Any property acquired under this agreement, at the option of the DEPARTMENT, may become the DEPARTMENT'S property and the GRANTEE'S liability to repay monies shall be reduced by an amount reflecting the fair value of such property.

N. PROJECT APPROVAL

The extent and character of all work and services to be performed under this agreement by the GRANTEE shall be subject to the review and approval of the DEPARTMENT through the Project Officer or other designated official to whom the GRANTEE shall report and be responsible. In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the Project Officer or other designated official as to the extent and character of the work to be done shall govern. The GRANTEE shall have the right to appeal decisions as provided for below.

O. DISPUTES

Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement which is not disposed of in writing shall be decided by the Project Officer or other designated official who shall provide a written statement of decision to the GRANTEE. The decision of the Project Officer or other designated official shall be final and conclusive unless, within thirty days from the date of receipt of such statement, the GRANTEE mails or otherwise furnishes to the Director of the DEPARTMENT a written appeal.

In connection with appeal of any proceeding under this clause, the GRANTEE shall have the opportunity to be heard and to offer evidence in support of this appeal. The decision of the Director or duly authorized representative for the determination of such appeals shall be final and conclusive. Appeals from the Director's determination shall be brought in the Superior Court of Thurston County. Review of the decision of the Director will not be sought before either the Pollution Control Hearings Board or the Shoreline Hearings Board. Pending final decision of dispute hereunder, the GRANTEE shall proceed diligently with the performance of this agreement and in accordance with the decision rendered.

P. CONFLICT OF INTEREST

No officer, member, agent, or employee of either party to this agreement who exercises any function or responsibility in the review, approval, or carrying out of this agreement, shall participate in any decision which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly interested; nor shall he/she have any personal or pecuniary interest, direct or indirect, in this agreement or the proceeds thereof.

Q. INDEMNIFICATION

1. The DEPARTMENT shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.
2. To the extent that the Constitution and laws of the State of Washington permit, the GRANTEE shall indemnify and hold the DEPARTMENT harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of the GRANTEE arising out of this agreement, except for such damage, claim, or liability resulting from the negligent act or omission of the DEPARTMENT.

R. GOVERNING LAW

This agreement shall be governed by the laws of the State of Washington.

S. SEVERABILITY

If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this agreement which can be given effect without the invalid provision, and to this end the provisions of this agreement are declared to be severable.

T. PRECEDENCE

In the event of inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable Federal and State statutes and regulations; (b) Scope of Work; (c) Special Terms and Conditions, and any terms incorporated therein by reference; and (d) the General Terms and Conditions.