



King County

**Metropolitan King County Council
Mobility and Environment Committee**

STAFF REPORT

Agenda Item:	7	Name:	Mike Reed
Proposed No.:	2018-0555	Date:	February 19, 2019

SUBJECT

Agreement with Soos Creek Water and Sewer District (“SCWSD”) for capacity reservation in Soos Creek conveyance facilities for the conveyance of City of Black Diamond wastewater to King County conveyance and processing facilities.

SUMMARY

Proposed Ordinance 2018-0555 authorizes the execution of an agreement with the Soos Creek Water and Sewer District providing for the reservation of capacity in SCWSD conveyance facilities— pipelines and pumps—for the conveyance of wastewater from the City of Black Diamond to King County interceptor pipelines, supporting the ultimate delivery of Black Diamond’s wastewater to King County’s South Treatment Plant in Renton. This agreement follows an extended period of planning, analysis and strategy development intended to address the provision of regional wastewater conveyance/treatment service to Black Diamond; it serves as an update to a series of earlier agreements with SCWSD for conveyance of Black Diamond’s wastewater flow. The agreement describes the projected volumes reserved, the terms of the reservation, and specifies the cost responsibility of the regional wastewater system for allocated capacity reserved in SCWSD conveyance facilities.

BACKGROUND

The City of Black Diamond, which is located in the southeast extremity of the King County Wastewater System service area, transitioned to sewer service in the 1960s. According to the 2012 Black Diamond Sewer Plan¹,

“The residents of Black Diamond used individual on-site septic systems from the 1860s when Black Diamond was settled until the mid-1980s. In the 1960s the city initiated plans for the first public sewer system after public health concerns arose from approximately 500 failing septic systems.”

The City and King County Metro (succeeded by the King County Wastewater Treatment Division) worked cooperatively over the succeeding years to address the wastewater

¹ City of Black Diamond Comprehensive Sewer System Plan 2012 pp25

issue in Black Diamond. After an initial treatment facility involving a natural marsh system was found to be inadequate and was abandoned in the 1960s, a period of planning, within the framework of the county's Conveyance System Improvement Program, ensued. The focus of that effort was centered on developing a strategy to convey the city's wastewater through the jurisdiction of the SCWSD, which borders Black Diamond, to County conveyance facilities.

The relationship between King County and the City of Black Diamond on this issue is addressed by the 1990 interlocal agreement (amended in 1992) between Metro and Black Diamond.

Pertinent language from the 1990 "Agreement for Sewage Disposal" with the City of Black Diamond speaks to the responsibility of the County regarding the extent of County interceptor pipelines, in relation to city-constructed pipeline responsibility:

"The Metropolitan Sewerage System shall thus include trunk or interceptor sewer facilities extending to a point within each tributary and natural drainage area where not more than one thousand acres remain to be served beyond the upper terminus of such trunk or interceptor sewer."

The City of Black Diamond's borders encompass an area of 6.66 square miles, or 4262.4 acres.

At the time of that original interlocal agreement, it was anticipated that the city's delivery of sewage to the regional system might be accomplished through the conveyance facilities of a nearby jurisdiction....

"In lieu of directly connecting local sewerage facilities of the City to the Metropolitan Sewerage System, the City may deliver sewage to the Metropolitan Sewerage System by means of the Local Sewerage Facilities of another participant. In that event, the City shall secure and pay for the right to use all Local Sewerage Facilities of another participant which may be required to deliver the City's sewage to the Metropolitan Sewerage System."

King County's participation in regional conveyance systems is provided for in the Regional Wastewater Services Plan policies, including policy which assigns King County responsibility for conveying wastewater from local agencies to treatment facilities:

CP-2: King County shall construct the necessary wastewater conveyance facilities, including, but not limited to pipelines, pumps and regulators, to convey wastewater from component agencies to the treatment plants for treatment and to convey treated effluent to water bodies for discharge.

The assignment of conveyance responsibility to the County of wastewater from component agencies appears to include County responsibility for project capital expense.

Regional Conveyance planning is conducted within the framework of the WTD's Conveyance System Improvement Project ("CSI"). The CSI Project is the systematic review, analysis, update and improvement of the larger regional conveyance system provided for in CP-4 of the Regional Wastewater Services Plan:

CP-4: The executive shall update the conveyance system improvement program every five years beginning in 2013 to ensure the program remains current.

Publications associated with the CSI planning in the Soos Creek Planning Zone, which include Black Diamond, reflect the evolution of strategy with regards to allocation of roles and responsibilities between the parties. In an August 2001 report by an agency consultant², an "Alternative 3" capital improvement project, one of several options to convey wastewater through the SCWSD jurisdiction to King County conveyance and treatment facilities, was discussed;

"Capital Improvements for Alternative 3 include four pump stations, approximately 40,600 linear feet of force main, and approximately 71,300 linear feet of gravity sewer. King County would assume responsibility for existing SCWSD Lift Station 10 and approximately 21,000 linear feet of local force main and gravity sewer..."

...In the Soos Planning Zone, King County flow projections are higher than local agency projections, indicating capacity may be exceeded sooner than local agencies expect. Subsequent studies should explore these differences and the implications for timing of projects and King County potentially taking responsibility for local facilities..."

...Final design of regional system components in the Soos Planning Zone should consider and optimize use of local facilities with available capacity. Final configuration should consider any additional facilities planned or recently constructed by the SCWSD."

These recommendations highlight the focus on cooperative King County and SCWSD development and operation of facilities intended to convey the Black Diamond flow to King County facilities—and in particular, the recommendations suggest that the parties "optimize the use of local facilities with available capacity".

Ultimately, this strategy was expressed in a revision to Alternative 3³, developed in cooperation with Soos Creek:

"In December 2001, King County and the Soos Creek Water and Sewer District (District) began discussing revisions to working alternative 3. The County and the District jointly developed working alternative 3A, which is described and evaluated in this 250 Supplemental Report. Alternative 3A incorporates flow split options described in various District configuration and cost estimate memos..."

...Under working alternative 3A, the County has responsibility for some regional service components, and the District has responsibility for local service components."

² King County Conveyance System Improvement Project Mill Creek/Green River Subregional Planning Area Task 260 Planning Area Summary Report HDR in association with Herrera Environmental Consultants, Inc. August 6, 2001 p 22, p25, p26.

³ "Mill Creek/Green River Subregional Planning Area Final Task 250 Supplemental Report, Working Alternative 3A Soos Planning Zone May 2002

The 2013 SCWSD Sewer Comprehensive Plan, reflects the emerging strategy addressed in Alternative 3A, involving optimization of the use of local facilities to convey the Black Diamond flow⁴:

"The City transports its wastewater to King County Department of Natural Resources Wastewater Treatment Division via the Soos Creek Water & Sewer District's system for treatment and disposal. The City had an agreement with Soos Creek Water & Sewer District that entitled the City to a capacity in the District's system to serve 3,600 people or 990,000 gallons per day. In 2006, King County assumed responsibility and entered into an agreement with Soos Creek Water & Sewer District for the conveyance of sewage from the City. The terms of the agreement state that the City's sewage will be conveyed through Soos Creek Water & Sewer District's facilities and that King County will pay for the wheeling of those flows beginning in 2010. Soos Creek Water & Sewer District will have capacity to provide for the City's sewage needs and its planned growth. The agreement with King County will be reviewed and modified as needed to accommodate for the terms of future capacity needs for the City."

ANALYSIS

Soos Creek Water and Sewer District and King County initially entered into an agreement providing for use of SCWSD facilities, with capacity reserved by King County for conveyance of Black Diamond wastewater flow, paid for by King County, in 2006; that agreement was renewed for three-year terms in 2010, 2013 and 2016. The parties are now seeking a revised agreement, which Proposed Ordinance 2018-0555 would authorize. Key elements of that agreement are as follows:

- The agreement identifies three classes of capital assets subject to the agreement:
 - Class E—those currently existing (two lift stations currently in service)
 - Class 10—those placed into service between January 1, 2018 and January 1, 2028
 - Class 25—those placed into service between January 1, 2028 and January 1, 2053. Anticipated projects in each class are identified.
- The District is to construct Class 10 and Class 25 assets on a schedule to maintain capacity for both District and County regional wastewater flows. The District and County must agree on need, schedule, scope, design, budget and cost allocation.
- The County will have capacity rights in each class of assets referenced above, for conveyance of Black Diamond wastewater.
- The District is to maintain the named assets in good working order.
- The County is to pay \$4.55 per Equivalent Residential Unit for capacity reservation for Class E assets. The parties will perform flow monitoring of the county's wastewater flow beginning within six months of the execution of the agreement, through the term of the agreement.
- The District will submit an annual report, including flow monitoring data, current and forecast flow comparison, asset management activities, and a summary of expenditures.

⁴ Soos Creek Water & Sewer District Sewer Comprehensive Plan 2013 Roth Hill p2-15

- The District is responsible for the design and construction of Class 10 or Class 25 assets; the District is to design for capacity for Black Diamond's projected peak flows. Facility plans, drawings and specifications will be submitted to the County; the District is not obligated to make County-recommended changes, but the District is subject to damages for a facility that does not provide sufficient capacity for the Black Diamond flow.
- The County will reimburse the District for capital costs for each asset class, based on a rate for each Black Diamond sewer customer served by the District's service in wheeling Black Diamond flow to the County's system. County's projected share of costs are:
 - Class E Assets: \$8,612,034
 - Class 10 Assets: \$4,300,000
 - Class 25 Assets: \$13,000,000
- The cost share calculation methodology is detailed in the agreement.
- Provisions for indemnification, insurance, breach and liquidated damages, termination, disputes, modifications, and notice are provided for.

AMENDMENT

In reviewing the transmitted legislation, counsel for the King County Council identified areas that required clarification. Working together with the PAO's office and representation from WTD and SCWSD, the parties developed revisions to the transmitted interagency agreement, which have been incorporated into the new agreement form attached as Attachment A to Amendment 1 to the proposed ordinance. SCWSD has agreed to this new agreement. Key elements in the new agreement are as follows:

- Language is revised to clarify that the County will reimburse the SCWSD only for those costs of constructing or upgrading District facilities that are associated with conveyance of Black Diamond wastewater flows.
- The effective date and termination date provisions are clarified.
- A new provision is added requiring that before design documents for new facilities are submitted for the County's review and comment SCWSD will confer with the County and the County will confirm in writing that the estimated capacity to be set aside for the County needs in facilities designed for 10-year or 25-year time frames is acceptable to the County. Internal references are updated accordingly.
- Introductory language is added to a section that describes the compensation to be provided by the County for use of SCWSD facilities for the conveyance of Black Diamond flows. The introductory language confirms agreement on the rate calculation formula determining the compensation amount, and provides the rate per Equivalent Residential Unit as of the date of agreement execution. The language specifies that these are "wheeling" costs that are associated with facility operation and maintenance and facility depreciation.
- An example is added to demonstrate the calculation of the County's share of operations, maintenance and depreciation costs for 2017.
- Language is added indicating the estimated flow volume attributable to Black Diamond flow to be accounted for in SCWSD existing facilities and facilities designed for 10-year and 25-year time frames, is estimated at 6,222 Equivalent

Residential Units ("ERU") (this term is used interchangeably with the term "Residential Customer Equivalents") at the time of execution of the agreement.

- An additional example is added to demonstrate the County's capital cost share if the flow volume attributable to Black Diamond flow to be accounted for in SCWSD facilities turns out to be less than 6,222 ERU.
- Language is revised to confirm that the County's contribution obligation will be determined by the number of RCE's of capacity the County needs, and that the County is not obligated to pay for construction costs of any unneeded capacity.

An amendment has been prepared to delete the existing agreement in Attachment A, and replace it with the Revised Attachment A.

ATTACHMENTS

1. Proposed Ordinance 2018-0555
 - a. Attachment A: Interagency Agreement Between Soos Creek Water and Sewer District and King County for the Joint Use, Construction and Maintenance of District Improvements
2. Amendment 1
 - a. Attachment A: Interagency Agreement Revised February 7, 2019
3. Transmittal Letter dated November 5, 2018
4. Fiscal Note

INVITED:

1. Bruce Kessler, Deputy Director, Wastewater Treatment Division
2. Sharman Herrin, Government Relations Administrator, Wastewater Treatment Division



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

Ordinance 18869

ORIGINAL

Proposed No. 2018-0555.2

Sponsors Dunn

1 AN ORDINANCE authorizing the King County
2 wastewater treatment division of the department of natural
3 resources and parks to enter into an agreement with Soos
4 Creek Water and Sewer District regarding the joint use,
5 construction and maintenance of district improvements.

6 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

7 **SECTION 1. Findings:**

8 A. The Soos Creek Water and Sewer District currently provides local sewer
9 collection services to approximately thirty-seven thousand customers.

10 B. Under a 1990 long-term agreement with the city of Black Diamond, the
11 county is required to operate, maintain, and repair the regional conveyance and treatment
12 facilities, including the Black Diamond Trunk (large sewer line), to serve the county's
13 regional wastewater service area, which includes Black Diamond.

14 C. In 2006, the county and Soos Creek Water and Sewer District entered into an
15 agreement whereby the Soos Creek Water and Sewer District agreed to convey sewage
16 from the county's Black Diamond Trunk through the Soos Creek Water and Sewer
17 District's facilities to the county's regional conveyance system.

18 D. The county is required by state law to plan for wastewater conveyance and
19 treatment facilities of adequate capacity to meet the needs of existing customers and

20 planned growth in its regional service area.

21 E. The Soos Creek Water and Sewer District constructed its Lift Station 11B and
22 Lift Station 10B with sufficient capacity to accommodate the Soos Creek Water and
23 Sewer District's projected future sewer capacity needs and the county's potential
24 increased capacity demands in Black Diamond. Lift stations are used to pump
25 wastewater from a lower to a higher elevation.

26 F. Based on the current estimated planning level cost of sixty million dollars for
27 the county to upgrade its conveyance system to serve Black Diamond as compared to an
28 estimated cost of twenty-four million dollars for the county's capital cost share to use
29 district facilities, it is more efficient and cost effective to serve Black Diamond by using
30 the district's conveyance facilities rather than upgrading or constructing county-owned
31 facilities.

32 G. The county and Soos Creek Water and Sewer District desire that the county
33 continue to use the Soos Creek Water and Sewer District's conveyance facilities to
34 convey regional wastewater flows from Black Diamond and that the county continue to
35 reimburse the Soos Creek Water and Sewer District for the county's use of district-owned
36 facilities as set forth in Attachment A to this ordinance.

37 SECTION 2. A. The King County executive or designee is hereby authorized to
38 enter into an agreement with the Soos Creek Water and Sewer District for the joint use,
39 construction and maintenance of district improvements.

40 B. The agreement shall be substantially in the form of Attachment A to this
41 ordinance.
42

Ordinance 18869 was introduced on 11/13/2018 and hearing held/closed and passed by the Metropolitan King County Council on 2/27/2019, by the following vote:

Yes: 9 - Mr. von Reichbauer, Mr. Gossett, Ms. Lambert, Mr. Dunn,
Mr. McDermott, Mr. Dembowski, Mr. Upthegrove, Ms. Kohl-Welles
and Ms. Balducci
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Red [Signature]

ATTEST:

Melani Pedroza
Melani Pedroza, Clerk of the Council



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CLERK
KING COUNTY COUNCIL

APPROVED this 11 day of MARCH, 2019.

Dow Constantine
Dow Constantine, County Executive

Attachments: A. Interagency Agreement, Revised February 7, 2019

**INTERAGENCY AGREEMENT
BETWEEN SOOS CREEK WATER AND SEWER DISTRICT AND KING
COUNTY FOR THE JOINT USE, CONSTRUCTION AND MAINTENANCE OF
DISTRICT IMPROVEMENTS**

This Interagency Agreement ("Agreement") is entered into by and between the Soos Creek Water and Sewer District (the "District"), a municipal corporation, and King County, a home rule charter county and political subdivision of the State of Washington, (the "County"), operating through its Wastewater Treatment Division, Department of Natural Resources and Parks. The District and King County may also be referred to individually as a "Party" and collectively as the "Parties."

1. RECITALS

This Agreement is based on the following facts, which both Parties acknowledge:

- 1.1. The District currently provides local sewer collection services to approximately 37,000 customers in southeast King County.
- 1.2. The County is designated by state statute as the successor to the Municipality of Metropolitan Seattle ("Metro"), and it currently provides regional wastewater collection, transmission, treatment and disposal services to 17 cities and 17 local sewer utilities in King County and portions of Snohomish and Pierce counties.
- 1.3. On or about August 1, 1963, Metro entered into a long-term agreement for sewage disposal with the District, which was amended in 1992 (the "Soos Creek Basic Agreement").
- 1.4. On or about September 12, 1990, Metro entered into a long-term agreement for sewage disposal with the City of Black Diamond ("Black Diamond").
- 1.5. The District owns, maintains, and operates several local sewer facilities including Lift Station 11B and Lift Station 10B and various sewer pipelines and appurtenances, hereinafter referred to collectively as the "District Conveyance Facilities."
- 1.6. Under the 1990 long-term agreement with Black Diamond, the County is required to operate, maintain, and repair the regional conveyance and treatment facilities, including the Black Diamond Trunk, to serve the County's regional service area, which includes Black Diamond.
- 1.7. The County, as successor to Metro, is required by state law to plan for wastewater conveyance and treatment facilities of adequate capacity to meet the needs of existing customers and planned growth in its regional service area. In 2005, the County considered enlarging its Black Diamond Trunk in order to accommodate the potential increased capacity demands that would be required to serve future development in Black Diamond. The County's cost to increase capacity to serve Black Diamond is currently

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estimated at \$59.8 million pre-planning level cost to upgrade the County's Pump Station D based on the 2007 Conveyance System Improvement Update and escalated to 2018 dollars

1.8. At about the same time, and in part to enable the District to meet its own projected future capacity needs, the District constructed its Lift Station 11B and Lift Station 10B. Both the Lift Station 11B and Lift Station 10B and the force mains were designed to create sufficient capacity to accommodate the District's projected future capacity needs and the County's continued use of these District facilities for the potential increased capacity demands that may occur in Black Diamond.

1.9. The County and the District determined that it was more efficient and cost effective to serve Black Diamond by using the District Conveyance Facilities rather than enlarging or constructing new County-owned facilities.

1.10. In January 2006, the County and the District entered into an agreement (the "2006 Conveyance Agreement") whereby the District agreed to convey sewage from the County's Black Diamond Trunk through the District's former Lift Station 11, now known as Lift Station 11B, to the County's S.E. 277th Street Interceptor, connecting at S.E. 256th Street. Pursuant to the 2006 Conveyance Agreement, the County agreed to pay the District for a portion of the District's operations, maintenance, and depreciation costs, based on the formula stated in the 2006 Conveyance Agreement, hereinafter collectively referred to as "District O, M & D Costs," for the County's use of these District owned facilities.

1.11. Pursuant to the 2006 Conveyance Agreement, the County has conveyed regional wastewater flows through the District Conveyance Facilities averaging .21 MGD annually.

1.12. The 2006 Conveyance Agreement was renewed for three-year terms in 2010, 2013, and 2016. The Parties now desire to terminate the 2006 Conveyance Agreement and replace it with this Agreement.

1.13. The District's Lift Station 10B was completed in 2005, with capital costs for the project totaling \$8,612,034. The District's Lift Station 11B was completed in 2016 with capital costs for the project totaling \$15,847,079.

1.14. The County and District desire that the County continue to use the District Conveyance Facilities to convey regional wastewater flows from Black Diamond and that the County continue to reimburse the District for the County's use of these District owned facilities as set forth herein.

1.15. The parties agree that the County will reimburse the District for the proportional cost of constructing or upgrading the District's capital facilities allocable to the conveyance of the County's regional wastewater flows from Black Diamond as calculated herein.

1.16. Pursuant to RCW 35.58.200 (2), the District and King County are authorized to enter into this Agreement for the joint use of the District Conveyance Facilities so long as this Agreement is approved by the legislative bodies of the District and the County. The Parties acknowledge and agree that this Agreement will require budget appropriations beyond the respective current approved budget resolutions/ordinances passed by the District's Board of Commissioners and the County Council, and thus will be subject to subsequent annual or biennial budget resolution or ordinance approvals by both legislative bodies, in accordance with applicable state and local laws.

2. PURPOSE

The purpose of this Agreement is to set forth the mutual obligations and rights of the District and the County for the use, design, construction, operation, maintenance, and depreciation of the District Conveyance Facilities and to provide reimbursement of appropriate capital costs incurred by the District and District O M & D Costs, for the County's use of such facilities. The Parties agree that the County will only pay that portion of the District's capital costs related to improvements to the District's Class E Assets, Class 10 Assets and Class 25 Assets, described in Section 4 below, which are necessary to convey the County's regional wastewater flows from Black Diamond as set forth in Sections 4 and 10 of this Agreement. The Parties understand and expect that the District's customer base will increase during the time of this Agreement and the District will be solely responsible for the cost of construction of the District's Conveyance Facilities necessary to meet the capacity needs of the District's increased customer base.

3. DURATION

3.1 This Agreement shall become effective upon the execution of this Agreement and approval by the County Council and the District's Board of Commissioners. Except as otherwise stated herein, this Agreement may be terminated upon mutual written agreement of the Parties, or as provided sections 9.2, 13 and 14.

3.2 The Parties agree that if a conflict exists between this Agreement and prior agreements referenced in this Agreement, the terms of this Agreement shall control.

4. THE DISTRICT'S CAPITAL FACILITIES

4.1 The District and County have identified three classes of capital assets that have been or may be constructed by the District, to accommodate the District's wastewater flows and the County's regional wastewater flows. These capital assets are referred to as the existing District Conveyance Facilities, hereafter referred to as the Class E Assets, the Class 10 Assets and the Class 25 Assets, as described below and depicted in the attached Exhibit A. The District and the County recognize the projected capital project budgets for the Class 10 Assets and Class 25 Assets are based on current engineering planning levels and will need to be adjusted, consistent with section 4.6 of this Agreement, as the planning for the projects matures. The District will not charge for new capital facilities

until the District's Board of Commissioners has accepted the Bill of Sale by Resolution, thus indicating that the Class 10 and Class 25 capital assets are operational.

4.2. The District's Class E Assets consist of existing capital assets known as Lift Station 10B and Lift Station 11B which the District has constructed and that have already been placed into service and are being used to convey the District's wastewater flows and the County's regional wastewater flows.

4.3. Class 10 Assets are those assets that are anticipated to be constructed and/or upgraded and placed into service after January 1, 2018 and before January 1, 2028, in order to convey the District's wastewater flows and the projected future County regional wastewater flows. The Class 10 Assets consist of upgrades to the District's existing Class E Asset, Lift Station 11B and the existing force main between Lift Station 11B and Lift Station 10B. The Class 10 Assets include:

4.3.1. Lift Station 11B Force Main Improvements: This project generally includes upgrades to the existing force main. The existing force main is approximately 15,000 lineal feet of 30-inch equivalent pipe from Lift Station 11B to Lift Station 10B. There is no current schedule for implementation of this project. The proportionate share of the capital costs for this project allocable to the conveyance of County regional wastewater flows from Black Diamond is estimated at \$3,000,000 in 2018 dollars; and

4.3.2. Lift Station 11B Upgrades: This project generally includes pump and motor upgrades which may be required to meet future capacity requirements. There is no current schedule for implementation of this project. The proportionate share of the capital costs for this project allocable to the conveyance of County regional wastewater flows from Black Diamond is \$1,300,000 in 2018 dollars.

4.4. Class 25 Assets are those assets that are currently planned to be constructed and/or upgraded and placed into service after January 1, 2028, and prior to January 1, 2053, in order to accommodate the District's wastewater flows and the projected future County regional wastewater flows. The Class 25 Assets include:

4.4.1 Lift Station 10B Parallel Force Main: This project generally includes construction of approximately 15,500 feet of 30-inch equivalent force main from the existing Lift Station 10B to the connection with the County's regional wastewater system. There is no current schedule for implementation of this project. The proportionate share of the capital costs for this project allocable to the conveyance of County regional wastewater flows from Black Diamond is estimated at \$13,000,000 in 2018 dollars.

4.5. Subject to the provisions of section 4.6 below, the District shall plan, design, construct, and commission the Class 10 and Class 25 assets on a schedule that maintains capacity for the District's wastewater flows and the County's regional wastewater flows.

4.6. Notwithstanding the provisions of sections 4.3, 4.4, 4.5 and 9.2.3 prior to the District incurring any costs for design or construction of any project related to a Class 10 Asset or a Class 25 Asset for which the County may contribute, the District and the County must agree upon the need for the project, the schedule, scope, design, budget and project cost allocation between the Parties. The District and the County agree to conduct joint engineering and planning analyses of the County's sewage demand projections as needed, but no less than once every 10 years throughout the duration of this Agreement. This analysis will be used to determine the necessity and schedule for the construction and/or upgrade of any Class 10 Asset and Class 25 Asset.

5.0 COUNTY USE OF DISTRICT'S CAPITAL FACILITIES

5.1. The County shall have capacity rights in the District's existing Class E Assets, the Class 10 Assets and the Class 25 Assets for the County's conveyance of regional wastewater flows from Black Diamond. The District shall convey all regional wastewater flows delivered from the County to the County's S.E. 277th Street Interceptor at the existing connection point on S.E. 256th Street or such other location as may be agreed upon by the Parties.

The District shall not be in breach of this Agreement if the reason that the District is unable to meet all of the County's regional wastewater capacity needs for regional wastewater flows from Black Diamond is due solely to the inadequacy of the County's regional wastewater conveyance system either upstream or downstream of the District Conveyance Facilities.

5.2. The amount of regional wastewater flows conveyed by the County to the District Conveyance Facilities, (and in the future to the Class 10 and Class 25 Assets) shall be metered by the District as set forth in Section 7.

5.3. The District shall maintain the District Conveyance Facilities, its Class E Assets, and where applicable the Class 10 Assets and the Class 25 Assets in good working order at all times.

6. COMPENSATION FOR THE COUNTY'S USE OF DISTRICT'S FACILITIES (WHEELING)

6.1. The Parties agree that the rate calculation formula set forth in this Section 6.1 shall determine the amount the County shall pay the District for the ongoing use of the District's facilities. Applying the formula, as of the date of execution of this Agreement, the rate is \$6.93 per Equivalent Residential Unit (ERU).

The payments made under this Section 6.1 reimburse the District for the County's proportional flow-share of the operating and maintenance costs of the District's assets as well as depreciation of the facilities. This rate is determined by averaging the previous year's five highest peak day flows, and then dividing that average by the maximum pumping capacity at Lift Station 10B and 11B respectively. This ratio is then applied to

the District's operation, maintenance, and depreciation costs for those facilities and their downstream conveyance systems.

The rate calculation is summarized by the following formulas:

$$\text{Rate} = \text{CBD} / \text{ERU}$$

$$C_{\text{BD}} = C_{10} * (Q_{\text{BD}} \div Q_{10}) + C_{11} * (Q_{\text{BD}} \div Q_{11})$$

Where:

- Rate is the cost per ERU to be paid to the District by King County for flow from the City of Black Diamond.
- C_{BD} is the City of Black Diamond's share of the District O, M & D Costs for the District's facilities that convey flow from the City of Black Diamond.
- ERU is the highest number of ERUs in the City of Black Diamond for the previous year.
- C_{10} is the District's total costs for operations, maintenance, and depreciation at Lift Station 10B and any conveyance systems downstream of Lift Station 10B.
- C_{11} is the District's total costs for operations, maintenance, and depreciation at Lift Station 11B and any conveyance systems downstream of Lift Station.
- Q_{BD} is the average of the five highest peak flows from the City of Black Diamond for the previous year.
- Q_{10} is the maximum capacity at Lift Station 10B.
- Q_{11} is the maximum capacity at Lift Station 11B.

Example

The following example calculates the County's share in 2017 for the operations, maintenance and depreciation costs for use of District facilities to convey County regional wastewater flows from Black Diamond to the County's regional wastewater system.

The calculation is based on the following costs and number of ERUs for 2017:

2017 Operating Expenses

	Lift Station 10B	Lift Station 11B
Electrical	\$160,262	\$43,174
Maintenance	\$33,786	\$9,888
Depreciation	\$321,591	\$588,739
Total Annual	\$515,639	\$641,801

2017 Black Diamond ERUs

Q1	1,050
Q2	1071
Q3	1,094
Q4	1,056

Agreement Formula:

$$\text{Rate} = C_{BD} / \text{ERU}$$

$$C_{BD} = C_{10B} \times (Q_{BD} / Q_{10B}) + C_{11B} \times (Q_{BD} / Q_{11B})$$

Q_{BD} = Black Diamond 2017 Avg of 5 Peak Flow Days	685,445	GPD*
Q_{10B} = LS 10B Capacity	14,400,000	GPD
Q_{11B} = LS 11B Capacity	6,620,000	GPD
Q_{BD} / Q_{10B} = Black Diamond's Share of LS 10B	4.760%	
Q_{BD} / Q_{11B} = Black Diamond's Share of LS 11B	10.354%	
C_{BD} LS10B	\$24,545	
C_{BD} LS11B	66,453	
Total CBD	\$90,998	
ERU = Black Diamond Peak ERU in 2017	1,094	
Rate = C_{BD} / ERU (Annual)	\$83.18	
Rate = C_{BD} / ERU (Monthly)	\$6.93	

*GPD refers to gallons per day.

6.2. The County shall pay the District quarterly for County usage based on the above formula. Each invoice will itemize the information set forth above.

7. FLOW MONITORING

7.1. The District and the County shall begin to perform flow monitoring jointly within six months of the execution date of this Agreement and shall continue according to the provisions of this Section throughout the term of this Agreement.

7.2. The District shall maintain all of the following:

- a. A magnetic flow meter or other flow measuring device at Lift Station 10B, 11B, and future Lift Station 10C on the station's force main to measure and record pressurized flows from each of these current and future Lift Stations.
- b. A flume meter or other flow measuring device at Lift Station 11B.

- c. Wet well level sensors that are capable of measuring water levels at Lift Stations 11B, 10B, and the future Lift Station 10C.

7.3. The District's O, M & D Costs will be based on the proportionate share of flow for wheeling the County's regional wastewater flows using measurements from these two meters.

7.4. All monitors and sensors will be installed and maintained by the District. At the County's request, the District will provide to the County the data to support the flow monitoring and any additional information or documentation to verify the data provided. The District will share data with the County.

7.5. The District and County will share flow-monitoring reports monthly that include data from flow monitors and sensors for which each party is responsible under this Agreement.

8. DISTRICT ANNUAL REPORTING AND INSPECTION REQUIREMENTS

8.1. On or before August 1 of each year, the District shall prepare and submit to the County an annual report. Each such report shall include all of the following:

- a. A summary of flow monitoring data for the year;
- b. A comparison of the then current and forecasted flows to the capacity of the District's Class E Assets;
- c. A summary of any asset management activities including servicing and replacement of equipment;
- d. If applicable, a summary including any District expenditures for any pending projects related to the District's Class E Assets, Class 10 or Class 25 Assets.

8.2. Upon request by the County, the District shall provide the County with an annual visit and tour of the District's Class E Assets, and if applicable, to the Class 10 Assets and Class 25 assets for the County's inspection and flow monitoring as described in Section 7. The County may also access any of these same facilities following 72-hour advance notice to the District.

9. DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE OF FUTURE DISTRICT CAPITAL FACILITIES

9.1. When the District constructs any project related to a Class 10 or a Class 25 Asset, then the District agrees to follow the terms and conditions set forth below for the design, construction, operation and asset management of the Class 10 Asset or Class 25 Asset.

9.2. Design of Future District Facilities for Joint Use.

9.2.1. The District shall be solely responsible for the design of the agreed upon project for the new or upgraded Class 10 Asset or Class 25 Asset. The new or upgraded facility shall be part of the District's Sewer Comprehensive Plan, approved by the District, the County and the Washington State Department of Ecology.

9.2.2. The District shall design and construct the Class 10 Asset and Class 25 Asset projects with sufficient capacity to meet the County's obligations for Black Diamond peak flows under the County's long-term sewage disposal agreement with the City of Black Diamond, which at the time of the execution of this Agreement is estimated at 6,222 ERUs.

9.2.3. Prior to the District submitting the 30 percent design documents for the Class 10 Assets and the Class 25 Assets to the County for review, as required by Section 9.2.4, the District shall confer with the County and obtain from the County written confirmation that the estimated capacity for which the District is designing either the Class 10 or Class 25 Assets relative to the County's needs as set forth in Section 9.2.2, is acceptable to the County.

9.2.4. The District shall submit for County review all engineer stamped facility plans, construction drawings, and specifications for any District facilities that will convey regional wastewater flows. The District shall submit 30 percent, 60 percent, 90 percent, design documents and bid ready documents to the County for review and comment. At the 90 percent design stage, the County must give its comments within 90 days unless otherwise agreed to in writing in advance of the deadline and shall not be unreasonably withheld.

9.2.5. The County's review and comment on the District's design plans shall not relieve the District of its responsibility for said design. The District acknowledges and agrees that the County's review, comment, or acceptance of any designs, plan specifications, or work plans relating to Class 10 or Class 25 Assets (a) exists solely for the benefit and protection of the County. The District is not obligated to make the County's recommended changes; however, the District is subject to the payment of liquidated damages pursuant to Section 13 for a District Conveyance Facility that is not constructed, operated or maintained in a manner that provides sufficient capacity for the County's regional wastewater flows from Black Diamond.

9.3. Construction of Future District Facilities for Joint Use

The District shall be solely responsible for the construction of the agreed upon project for the new or upgraded Class 10 Assets or Class 25 Assets. The following shall apply for all such projects:

9.3.1. The District shall act as the lead agency under the State Environmental Policy Act for any such project.

9.3.2. The District shall obtain all permits, approvals and property rights required for the project.

9.3.3. Prior to the solicitation of bids for any such project, the Parties shall meet and consider the potential insurance requirements suitable for each project, considering its size and scope to adequately protect the District and the County.

9.3.4. The District shall award the project contract, administer the project contract, including accounting and payment to the contractor, maintain the project records and arrange a preconstruction conference with the contractor after awarding the contract and invite the County to attend and participate in such conference.

9.3.5. The District shall comply with all federal, state and local laws applicable to special purpose districts, including without limitation all public works and procurement laws including, but not limited to, applicable Contractors' performance and payment bond, prevailing wage, nondiscrimination, retainage, insurance, and workers compensation requirements.

9.3.6. The District shall inspect, control, and administer construction of the facilities. The County shall have the right to review and inspect the work in progress. Prior to final acceptance of the work by the District, the County and the District shall participate jointly in final inspection of the completed facilities, and the County may make recommendations regarding deficiencies or incomplete work in accordance with the construction contract. The District shall reasonably pursue reasonable remedies for the correction of defective and non-conforming work that is identified by the County, however, the District has the final decision on the actions taken in response to comments provided by the County. The District acknowledges and agrees that the County's review or comments on any constructed facilities (a) exists solely for the benefit and protection of the County and (b) may not be asserted against the County by the District as a defense to the District's failure to fulfill its obligations under this Agreement.

9.4. Operation and Asset Management.

9.4.1. For all facilities that convey regional wastewater flows, the District shall have a Sewer Comprehensive Plan that presents a systematic process of operating, maintaining, upgrading, and disposing of assets cost-effectively over time.

9.4.2. For all facilities that convey regional wastewater flows, the District shall monitor wastewater flows at a location sufficient to determine that there is adequate capacity to convey the current and forecasted wastewater flows.

9.5. The District will own the completed Class 10 Assets and Class 25 Assets. The District shall be responsible for operation, maintenance, permitting, monitoring, replacement, repair, alteration, and improvement costs associated with the District Conveyance Facilities, the Class 10 Assets and the Class 25 Assets subject to reimbursement from the County in accordance with section 10 of this Agreement. The County does not, and will not own, any interest in the District Conveyance Facilities, the Class 10 Assets or the Class 25 Assets.

10. CAPITAL COST REIMBURSEMENT

The County agrees to reimburse the District for a portion of its capital costs directly related to the District's Class E Assets, the Class 10 Assets, and the Class 25 Assets based on the actual costs associated with planning, design, construction, permitting, legal, District costs, and the commissioning of said facilities through a Monthly Capital Cost Rate ("MCCR") for each of Black Diamond's sewer customers served by the District wheeling wastewater flows through District facilities to the County's regional wastewater system.

10.1. The County's share of the District's Class E Assets (actual costs) and the County's projected share of the Class 10 Assets and Class 25 Assets in 2018 dollars are:

Class E Assets	\$8,612,034	Actual costs
Class 10 Assets	\$4,300,000	Projected costs
Class 25 Assets	\$13,000,000	Projected costs

See Exhibit B for more detail.

10.2. Cost Share Methodology

The District collects a General Facilities Charge from new customers to fund the capacity increase portions of its capital facilities, including the Class E, Class 10, or Class 25 Asset identified herein and in Exhibit B.

A facility's capacity increase can be represented in residential customer equivalents ("RCEs") where one RCE equals 0.5 gallons per minute ("gpm"), which includes allowance for domestic sewage, infiltration and inflow per the Department of Ecology Standards, and a peaking factor. For the purposes of this Agreement, the Parties agree that the terms ERU, a District term, and RCE, a County term, are units of measure that relate to the same concept of quantifying the number of users accessing a Party's wastewater system; provided however, the calculation for all customers served by the facilities subject to this Agreement, such as non-residential and other commercial customers, shall be in accordance with the County's definitions and policies.

For the purposes of this Agreement, the County's maximum capacity share of any Class E, Class 10, or Class 25 Asset shall be the projected buildout for Black Diamond of 6,222 RCEs, provided however, this number may be adjusted by mutual agreement between the Parties in the future as additional planning data for the Black Diamond service area matures.

The County's total capital cost share represents the percentage of increased capacity used by Black Diamond customers, multiplied by the portion of the capacity increase funded by the General Facilities Charge. The County's capital cost share percentage for a facility shall be determined based on the actual number of RCEs for the quarter multiplied by 0.5 gpm as a surrogate for one RCE, divided by the capacity increase in RCE's for the facility, and multiplied by that portion of a capacity increase funded by a General Facilities Charge.

Formula 1

County's total capital cost share for a facility = $(6,222 \text{ RCEs} \times 0.5 \text{ gpm}) / \text{Capacity Increase of the facility in gpm}) \times \text{cost for the capacity increase funded by the General Facilities Charge paid by new sewer connections.}$

Example 1

The following example calculates the County's capital cost share for capacity in the District's assets assuming the full projected buildout for Black Diamond of 6,222 RCEs. Note this example uses actual project costs based on construction completion for Class E Lift Station 10B and is illustrative only.

From Exhibit B, the portion funded by new sewer connections through the General Facilities Charge ("GFC") for Lift Station 10B is \$4,303,772 and the capacity increase is 6,000 gpm. Therefore, the

County's total capital cost share = $(6,222 \text{ RCEs} \times 0.5 \text{ gpm}) / (6,000 \text{ gpm}) \times \$4,303,772$

County's total capital cost share = $(0.5185) \times \$4,303,772$

County's total capital cost share = \$2,232,000 (rounded)

In this example, the County's capital cost share percentage is 51.85 percent.

Example 2

Because the County's obligation to pay its capital cost share for capacity in the District's assets is based on the actual number of RCEs that connect to sewer, the following example calculates the County's capital cost share for capacity in the District's Class E Lift Station 10B if only 3,000 RCEs were connected to the wastewater system in Black Diamond and serviced by the District's sewer system. This example uses actual project costs for Class E Lift Station 10B and is illustrative only.

From Exhibit B, the portion funded by new sewer connections through the General Facilities Charge for Lift Station 10B is \$4,303,772 and the capacity increase is 6,000 gpm. Therefore, the

County's total capital cost share = $(3,000 \text{ RCEs} \times 0.5 \text{ gpm}) / (6,000 \text{ gpm}) \times \$4,303,772$

County's total capital cost share = $(0.25) \times \$4,303,772$

County's total capital cost share = \$1,075,000 (rounded)

In this example, the County's capital cost share percentage is 25 percent.

10.3. The MCCR assigned to each of the County's Black Diamond sewer customers served by the District's sewer system shall be based on the County's capacity share of the District's Class E, Class 10 and Class 25 Assets. The following MCCR will be charged for the various assets:

The MCCR for the Class E Assets is calculated to be \$8.18 (based on actual costs) per customer per month with collection scheduled to start with the first quarterly payment following execution of this Agreement.

The MCCR for the Class 10 Assets is projected to be \$4.09 per customer per month in 2018 dollars and will be recalculated as the projected costs for the Class 10 Assets are

revised. The Class 10 MCCR will be charged after the District's Board of Commissioners has accepted the Bill of Sale by Resolution, thus indicating that the Class 10 capital assets are operational.

The MCCR for the Class 25 Assets in 2018 dollars is projected to be \$12.35 per customer per month and will be recalculated as the projected costs for the Class 25 Assets are revised. The Class 25 MCCR will be charged as soon as the District's Board of Commissioners has accepted the Bill of Sale by Resolution, thus indicating that the Class 25 capital assets are operational. (Note in Exhibit C and for illustrative purposes only, the Class 25 MCCR is scheduled to start on January 1, 2039.)

The County shall pay the District for the County's share of capacity in the Class E Assets, Class 10 Assets, and Class 25 Assets within 45 days following the end of each quarter. The County shall pay the District for the County's share of the capacity in the District's system until all capital costs paid by the District for such capacity have been recovered. The MCCR funds collected by the District shall be applied first to Class E Assets, then to the Class 10 Assets and then to the Class 25 Assets in order to retire the capital costs of the oldest assets first.

10.4. For purposes of this Agreement, the quarters of each year are as follows: Quarter 1 is January through March, Quarter 2 is April through June, Quarter 3 is July through September and Quarter 4 is October through December. Quarterly payments are defined as the payment due to the District for use of their Assets. For example, the quarterly payment due for Quarter 2 will be calculated for the number of RCEs connected to the Black Diamond system in Quarter 2 and the applicable MCCR for Quarter 2, and the payment made in Quarter 3.

10.5. Beginning with the County's first quarterly payment to the District, the County's payment to the District shall equal the number of sewer connections in Black Diamond multiplied by the Class E Asset MCCR. The number of sewer connections shall include existing sewer connections within Black Diamond on the effective date of this Agreement plus any new sewer connections in Black Diamond reported to the County's capacity charge program.

The total MCCR applicable for the quarter in which the payment is calculated may be a combination of the following rates: 1) Class E MCCR only, 2) the combination of the Class E MCCR plus the Class 10 MCCR, 3) the Class 10 MCCR only, 4) the combination of the Class 10 MCCR plus the Class 25 MCCR, or 5) the Class 25 MCCR only.

Formula 2

County's total quarterly payment to the District = $(A \times \text{MCCR}) \times 3$

$A = B + C$

Where:

A = the total number of RCEs for the quarter

B = the total number of existing Black Diamond RCEs at the end of the quarter prior to the quarter that the payment is due

C = the total number of new RCEs in Black Diamond which connected to the sewer system during the quarter prior to the quarter that the payment is due

MCCR = the applicable Monthly Capital Cost Rate

Examples

The following examples calculate the County's total quarterly payment due to the District based on the applicable MCCR. Note these examples use actual costs for Class E Assets in 2013 dollars and projected costs for Class 10 Assets and Class 25 Assets in 2018 dollars and are illustrative only.

The following is an example calculation of the payment due to the District for the second quarter of 2018.

As of the end of the first quarter of 2018 (March 31, 2018), 1,093 RCEs were connected to the Black Diamond sewer system. During the second quarter of 2018 (the period of April 1 to June 30, 2018), for purposes of this example, it is assumed that 55 new RCEs connected to the Black Diamond sewer system.

The applicable MCCR for this quarter is the Class E MCCR which is \$8.18 per RCE per month.

County's total quarterly payment to the District = $(1,093 \text{ RCEs} + 55 \text{ RCEs}) \times \$8.18) \times 3$

County's total quarterly payment to the District = $(1148 \text{ RCEs} \times \$8.18) \times 3$

County's total quarterly payment to the District = $\$9,390.64 \times 3$

County's total quarterly payment to the District = $\$28,171.92$

A second example is the calculation of a payment due to the District for the first quarter of 2039. Refer to Exhibit C for additional information. The cash flow projection in Exhibit C assumes that as of December 31, 2038, 5,443 RCE's are connected to the Black Diamond sewer system, and 50 RCEs are connected during the first quarter of 2039. From Exhibit C, the Total Monthly MCCR is projected to be $(\$8.18 + \$4.09) \$12.27$.

County's total quarterly payment to the District = $(5,443 \text{ RCEs} + 50 \text{ RCEs}) \times \$12.27) \times 3$

County's total quarterly payment to the District = $(5,493 \text{ RCEs}) \times \$12.27) \times 3$

County's total quarterly payment to the District = $\$67,399.11 \times 3$

County's total quarterly payment to the District = $\$202,197.33$

10.6. The District and County further agree that the County will pay the applicable MCCR, as set forth in section 10.3 of this Agreement, for the Class 25 Assets after the District's Board of Commissioners has accepted the Bill of Sale by Resolution, thus indicating that the Class 25 capital assets are operational.

10.7. If the County and District determine that the number of sewer connections in Black Diamond increase from the 6,222 projected RCEs for Black Diamond, then the monthly calculations for the County's capacity share of the District's Class E Assets, Class 10 Assets and Class 25 Assets shall be re-evaluated and the monthly rate for reimbursement recalculated.

10.8. Notwithstanding any other provision in this Agreement, the District and County agree that the County's obligation to contribute to the construction of District Assets shall be determined by the number of RCEs, representing the capacity the County confirms it needs under Section 9.2.3. The Parties agree the County shall not be obligated to pay for construction costs of any unneeded capacity.

10.9. The County shall be responsible for calculating all quarterly payments to be submitted to the District.

11. INDEMNIFICATION AND HOLD HARMLESS; RELEASE AND WAIVER.

11.1. The District agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless the County, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof for injury to persons, death, or property damage which is caused by,

arises out of, or is incidental to the District's performance under this Agreement, except to the extent of the County's negligence. The District's obligations under this subsection shall include:

- a. The duty to promptly accept tender of defense and provide defense to the County at the District's own expense;
- b. Indemnification of claims made by the District's own employees or agents; and,
- c. The District expressly and specifically waives its immunity under the industrial insurance provisions of Title 51 RCW but only to the extent necessary to fully indemnify the County, which waiver has been mutually negotiated by the Parties.

11.2. In the event it is necessary for the County to incur attorney's fees, legal expenses or other costs to enforce the provisions of this Section, all such fees, expenses and costs shall be recoverable from the District.

11.3. A hold harmless provision to protect the County similar to this provision shall be included in all contracts entered into by the District in conjunction with this Agreement.

11.4. The Parties agree that the provisions of this Section 11 shall survive the termination of this Agreement.

12. INSURANCE

12.1. By the date of execution of this Agreement the District shall procure and maintain for the duration of this Agreement (unless otherwise specified), insurance against claims for injuries to persons and damages to property which may arise from, or in connection with the performance of the obligations under this Agreement by the District, its agents, representatives, employees, consultants and contractors. The cost of such insurance shall be paid by the District.

By requiring such minimum insurance coverage, the County shall not be deemed or construed to have assessed the risks that may be applicable to the District under this Agreement. The District shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s).

Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Agreement.

For all coverages: Each insurance policy shall be written on an "Occurrence" basis.

12.2. Minimum Scope and Limits of Insurance:

12.2.1. Commercial General Liability: Coverage shall be at least as broad as: Insurance Services Office Form No. CG 00 01, covering Commercial General Liability no less than \$5,000,000 combined single limit per occurrence and, for those policies with an aggregate limit, a \$5,000,000 aggregate limit. Coverage shall extend for a period of six years subsequent to the expiration or termination of this Agreement. Coverage shall include Explosion and Collapse.

12.2.2. Automobile Liability: Insurance Services Office form number CA 00 01, covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9. \$5,000,000 Combined Single limit Bodily Injury and Property Damage.

12.2.3. Workers' Compensation: Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington.

12.2.4. Employers Liability or "Stop-Gap": The protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the General Liability policy. Limit: \$5,000,000.

12.2.5. Professional Liability, Errors and Omissions: \$5,000,000 Per Claim and in the Aggregate. In the event that services delivered pursuant to this Agreement either directly or indirectly involve or require professional services, Professional Liability, Errors, and Omissions coverage shall be provided. "Professional Services," for the purpose of this Contract section, shall mean any services provided by a licensed professional or those services that require professional standards of care. Coverage shall be effective for a period of six years subsequent to any project completion.

12.3. Deductibles and Self-insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the County. The deductible and or self-insured retention of the policies shall not limit or apply to the District's liability to the County and shall be the sole responsibility of the District.

12.4. **Other Insurance Provisions.** The insurance policies required in this Agreement are to contain or be endorsed to contain the following provisions:

12.4.1. For all liability policies except Professional Liability and Workers Compensation, the County, its officers, officials, employees, and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the District in connection with this Agreement. Additional Insured status shall include both Ongoing Operations and Products-Completed Operation and extend for a period of six years subsequent to the expiration or termination of this Agreement.

12.4.2. The District's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees, or agents shall not contribute with the District's insurance or benefit the District in any way.

12.4.3. The District's insurance shall apply separately to each insured against whom a claim is made and or lawsuit is brought, except with respect to the limits of the insurer's liability.

12.5. For All Policies: Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, until after thirty (30) days prior notice - return receipt requested, has been given to the County.

12.6. **Acceptability of Insurers.** Insurance is to be placed with insurers with a Bests' rating of no less than A: VIII, or if not rated with Bests' with minimum surpluses, the equivalent of Bests' surplus size VIII.

If at any time, any of the foregoing policies fail to meet the above stated requirements, the District shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements for approval.

12.7. **Verification of Coverage.** The District shall furnish the County with certificate(s) of insurance and endorsement(s) required by this Agreement. The certificate(s) and endorsement(s) for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by the County and are to be received and approved by the County prior to the commencement of activities associated with the Agreement. The County reserves the right to require complete certified copies of all required insurance policies at any time.

12.8. King County reserves the right to reasonably modify the required insurance coverage to reflect the then-current risk management practices and underwriting practices in the insurance industry.

13. BREACH AND LIQUIDATED DAMAGES

13.1. The Parties recognize and agree that the County is relying on the use of the District's wastewater facilities to convey the County's current and future projected regional wastewater flows from Black Diamond and that the County has forgone building and adding capacity or infrastructure of its own to handle these current and future County regional wastewater flows. The District agrees that if it is unable or unwilling to handle, convey or meet the County's regional wastewater capacity needs, including expected increased need from future development in Black Diamond, then the District will be in breach of this Agreement. The District will not be in breach under this provision unless the District fails to remedy the conditions giving rise to the breach including entering into "wheeling" agreements and/or agreement(s) regarding the immediate improvement or construction of facilities, within one hundred and eighty (180) days after receiving notice by the County of the District's breach. The District shall not be in breach of this Agreement if the reason that the District is unable to meet all of the County's regional wastewater capacity needs for regional wastewater flows from Black Diamond is due solely to the inadequacy of the County's regional wastewater conveyance system either upstream or downstream of the District Conveyance Facilities.

13.2. The County shall be entitled to all remedies in law or in equity against the District in the event of breach of this Agreement by the District including specific performance. In the event that the District fails to perform its obligations under this Agreement, including the obligation in section 9.2.2. of this Agreement to provide capacity sufficient to accommodate the potential increased wastewater capacity demands that would be required to serve development in Black Diamond, the District shall pay to King County liquidated damages in the amount of \$10,000 per day which liquidated damages amount shall be increased every five (5) years on the anniversary date of the Agreement. The adjustment in the liquidated damages amount shall be based on the Consumer Price Index (or other Index related to construction prices). The calculation of the adjustment in the liquidated damages amount will use the change in the CPI-U between the start date of the Agreement (or date of the CPI data used for the last liquidated damage amount adjustment) and the latest monthly CPI data available on the date of the District's breach of

contract. Adjustments to the liquidated damages amount will be made only if the calculated change exceeds five (5) percent. Such amount, as periodically adjusted represents liquidated damages and does not constitute a penalty and shall be referred to herein as the "Damages Due for Breach." Such amount is a reasonable estimate of the amount of damages the County will suffer as a result of breach of the Agreement, and is fixed by the Parties subject to increases for inflation as described herein, due to the likely difficulty of determining actual damages for the cost of conveying County regional wastewater flows from Black Diamond by an alternate method of conveyance.

14. TERMINATION

14.1. This Agreement may be terminated for breach, or upon the mutual written agreement of the Parties.

A. Termination of Capital Cost Reimbursement

14.2. In addition to the above, the County may terminate all or a portion of this Agreement, for convenience, if the County determines that it does not need additional capacity in the District's Class 10 Assets and/or Class 25 Assets to convey the County's regional wastewater flows from Black Diamond.

14.2.1. In the event that the County, in its sole discretion, determines that it does not need capacity in the District's Class 10 Assets or Class 25 Assets and provides the written confirmation required under section 9.2.3 of this Agreement, the County will compensate the District for the County's proportionate share of the capital costs of the Class E Assets, but the County shall have no obligation to contribute to the capital costs of the Class 10 Assets or the Class 25 Assets. In such case, the District may proceed to construct the Class 10 Assets and the Class 25 Assets at the District's sole cost and expense.

14.2.2. In the event that the County in its sole discretion determines that it needs capacity in the Class 10 Assets but not in the Class 25 Assets and provides the written confirmation required under section 9.2.3 of this Agreement, then the County will compensate the District for the County's proportionate share of the capital costs of the Class 10 Assets, but the County shall have no obligation to contribute to the capital costs of the Class 25 Assets. In such case, the District may proceed to construct the Class 25 Assets at the District's sole cost and expense.

B. Termination of County's use of District's Facilities (Wheeling)

14.3. At any time during this Agreement, the County may, in its sole discretion, terminate its use of District facilities for the conveyance of County regional wastewater flows from Black Diamond, as described in Section 6, by providing the District with written notice of its intent to terminate such use at least ninety (90) days before the effective date of such termination. If the County provides such notice of intent to terminate use, then the District shall no longer be obligated to accept the County regional wastewater flows from Black Diamond after the effective date of such termination.

15. DISPUTES

If a dispute arises between the District and the County, the Parties agree that they will attempt to resolve the issues through mutual negotiation. In the event the Parties are not able to reach an agreement through such negotiation, the Parties agree to engage in mediation prior to litigation. Mediation may be requested by either Party and shall be attempted prior to the institution of any lawsuit arising under this Agreement. The Parties agree to select a mediator with subject matter expertise and to share the costs of mediation equally. Provided, however that either Party may seek injunctive or other equitable relief, including specific performance, without any requirement to negotiate or mediate in the event of an emergency or substantial interference with the use of the District's facilities. Both Parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of Washington and that the venue of any action brought hereunder shall be King County, Washington.

16. CHANGES AND MODIFICATIONS

Either Party may request changes, amendments, or additions to any portion of this Agreement; however, except as otherwise provided in this Agreement, no such change, amendment, or addition to any portion of this Agreement shall be valid or binding upon either Party unless it is in writing and signed by personnel authorized to bind each of the Parties. No amendments that affect Sections 2, 3, 5, 6, 10, 14, or this Section 16 shall be effective unless approved by the King county Council. All amendments shall be made part of this Agreement.

17. NOTICES

Unless otherwise directed in writing, any notice or document required by this Agreement shall be delivered to:

King County
Department of Natural Resources & Parks
Attn: Wastewater Treatment Division Director
KSC-NR-0501
201 S. Jackson St.
Seattle, WA 98104-3855

Soos Creek Water and Sewer District
General Manager
14616 S E 192nd Street
Renton, WA 98058
FAX 253-630-5289

Notices mailed by either Party shall be deemed effective on the date mailed. Either Party may change its address by giving the other written notice of not less than five (5) days prior to the effective date.

18. MISCELLANEOUS PROVISIONS

18.1. **Governing Law.** This Agreement is intended to and shall be governed by the laws of the State of Washington, without regard to its rules regarding conflict of laws.

18.2. **Entire Agreement.** The terms and conditions set forth in this Agreement constitute the complete and exclusive statement of the agreement between the Parties hereto relating to the limited subject matter of this Agreement, superseding all previous negotiations and understanding, whether oral or in writing, express or implied, and may not be contradicted by evidence of any prior or contemporaneous agreement applicable to the same subject matter, and replaces and supersedes any prior agreements related to service or conveyance of flows from the Black Diamond conveyance area; including, specifically, the Agreement described in section 1.3 hereof. Any modification of the Agreement must be in writing signed by the Parties. However, the Soos Creek Basic Agreement remains unchanged.

18.3. **No Joint Venture.** This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligation or liability on either Party. No Party hereto shall have any undertaking for or on behalf of, or act as or be an agent or representative of, or otherwise bind the other Party, except as specifically authorized by the Agreement. No liability shall attach to The District or to the County by reason of entering into this Agreement except as expressly provided herein.

18.4. **Remedies not Exclusive.** This Agreement in no way waives any remedies available to either Party under common law or statute.

18.5. **Construction of Agreement.** The determination of the terms of, and the drafting of, this Agreement has been by mutual agreement after negotiation, with consideration by and participation of counsel for both Parties. The Agreement shall be construed according to the fair intent of the language taken as a whole, and not for or against either Party.

18.6. **Waiver.** The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

18.7. **Good Faith, Cooperation and Due Diligence.** The Parties hereto covenant, warrant and represent to each other good faith, complete cooperation, due diligence and honesty in fact in the performance of all obligations of the Parties pursuant to this Agreement. All promises and covenants are mutual and dependent.

18.8. **Counterparts.** The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all signatories had signed the same instrument.

18.9. **Savings Clause.** If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

18.10. **No Third Party Beneficiaries.** This Agreement is entered into solely for the mutual benefit of the District and the County. This Agreement is not entered into with the intent that it shall benefit any other person and no other such person shall be entitled to be treated as a third party beneficiary of this Agreement.

18.11. **Assignment.** The rights and obligations of The District and the County shall inure to the benefit of and be binding upon their respective successors and assigns. However, the District and the County may not assign this Agreement without the other's prior written approval.

18.12. **Not a Regional Facility.** The Class E Assets, Class 10 Assets and Class 25 Assets shall not be considered regional facilities as defined in the Soos Creek Basic Agreement.

18.13. **Authority.** Each individual signing this Agreement warrants that he or she has the authority to enter into this Agreement on behalf of the Party for which that individual signs.

IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

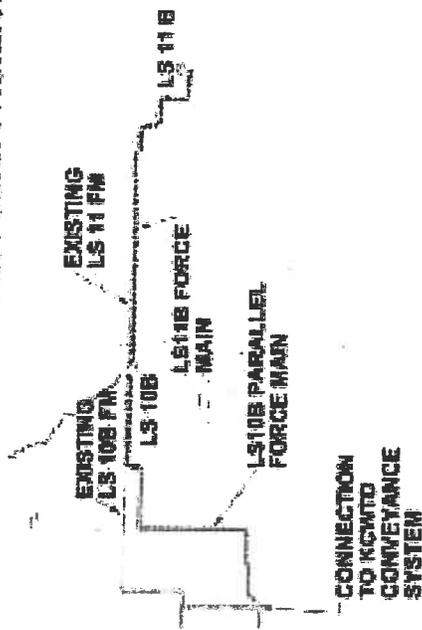
AGREED TO AND ACCEPTED:

DATED: March 19, 2019 By: B.E.K.
Bruce E. Kessler, Deputy Director
King County

DATED: MARCH 20, 2019 By: Rm Speer G.M.
Soos Creek Water and Sewer District

Exhibit A. Proposed District Facilities

SOOS CREEK WATER & SEWER DISTRICT
PROPOSED FACILITIES - NEXT 25 YEARS



LS11B FM Improvements - \$3M*
 LS11B Upgrades - \$1.3M**
 LS10B Parallel FM - \$13M*
 (*Beyond 10-yr Planning Horizon)
 **Based on 2018 dollars

EXISTING BLACK DIAMOND TRUNK

EXISTING BLACK DIAMOND LIFT STATION

LS 10B FM
 LS 11B FM
 LS 10B PARALLEL FM
 LS 11B FM
 LS 10B FM
 LS 11B FM
 LS 10B FM
 LS 11B FM

August 2018

Exhibit B

**AGREEMENT ON WASTEWATER CONVEYANCE AND CAPITAL FACILITIES BETWEEN
SOOS CREEK WATER AND SEWER DISTRICT AND KING COUNTY WASTEWATER TREATMENT DIVISION**

Last Update: August 15, 2018

Cap Fac Plan No.	Description of Project/Item	Project Costs	General Facilities Charge Funding (3)	Existing Capacity (gpm) (5)	Maximum Capacity (gpm)	Capacity Increase (gpm)	Black Diamond Share	Black Diamond Share
Class E Assets (1), (2)								
Complete	Lift Station 11B (4-2007) (6), (7)	\$ 15,847,079	\$ 6,972,715	4,600	8,000	3,400	91.50%	\$ 6,380,034
Complete	Lift Station 10B	\$ 8,607,543	\$ 4,303,772	3,000	9,000	6,000	51.85%	\$ 2,232,000
Subtotal Class E								\$ 8,612,034
Class 10 Assets (1), (2)								
None	LS 11B Pump and Motor Upgrade (7)	\$ 1,000,000	\$ 1,000,000	4,600	8,000	3,400	91.50%	\$ 915,000
P11-17	LS 11B Force Main/SE 256th Upgrade (8)	\$ 8,400,000	\$ 8,400,000	4,600	17,640	13,040	23.86%	\$ 2,004,000
P12-8	LS 11 Force Main Bottleneck Upgrade (4), (9)	\$ 1,657,000	\$ 457,000	4,600	6,350	1,750	100.00%	\$ 457,000
Subtotal Class 10 Assets (2)								\$ 3,376,000
Subtotal Class 10 Assets (10)								\$ 4,300,000

Notes:

- (1) Class E Assets are complete and in service. Class 10 Assets are planned to be constructed prior to January 1, 2028.
- (2) Project costs for Class E Assets are final. Project costs for Class 10 Assets are projected and based on the best estimates, and are based on 2013 dollars.
- (3) General Facilities Charge funding portion is taken from General Facilities Charge calculations performed in 2013.
- (4) Because the capacity requirement for Black Diamond exceeds the hydraulic capacity increase of the project, the Black Diamond portion has been assumed to be 100%. The ultimate number of RCEs is used in this calculation because the General Facilities Charge recovery is based on a monthly recovery over an extended period.
- (5) Existing capacity is assumed to be 3000 gpm from the original LS 10.
- (6) LS11B capacities based on email from Kevin Goss (TetraTech 4/15/13). Ex. capacity based on multiple pump operation. Future capacity requires pump & motor upgrades.
- (7) Estimate for future pump and motor upgrades described above.
- (8) Existing capacity of 4600 gpm is from LS11B. Maximum capacity is for 30-inch force main.
- (9) Existing capacity of 4600 gpm is from LS11B. Maximum capacity is for an 18-inch force main.
- (10) Class 10 Assets expressed in 2013 dollars.

Exhibit C									
Black Diamond Contract- Illustration for Cash Flow Projections									
Moderate rate of growth 300 RCEs per year, reduce growth rate to 200 after three years, Class 10 Asset recovery starts in 2028, Class 25 Asset recovery starts in 2038									
		10-Aug-18							
Projected RCEs at build out		6,222			(1)				
Existing RCEs as of March 2018		1,093			(2)				
OMD Recovery Illustration									
Monthly Rate for OMD per RCE		\$4.53			(3)				
Monthly Rate for OMD for RCEs as of April 2018		\$4,878			(4)				
Quarterly Rate for OMD for RCEs as of April 2018		\$14,919							
Annual Rate for OMD for RCEs as of April 2018		\$59,678							
Capital Cost Recovery Illustration									
		Class E Assets	Class 10 Assets	Class 25 Assets	Total				
		In-place	2018 on	2028 on	varies				
Total Black Diamond Capital Expenditure		\$8,612,034	\$4,300,000	\$19,000,000	\$25,912,034				
					(5)				
(estimated amount to be recovered)									
Factor (5%, 25 year) term		actual: 0.07095	estimate: 0.07095	estimate: 0.07095	estimate: 0.07095				
Interest rate		25%	25%	25%	25%				
		5%	5%	5%	5%				
		MCCR-E	MCCR-10	MCCR-25					
Per Black Diamond ERU monthly rate		\$8.18	\$4.09	\$12.35	\$24.62				
					\$12.27				
					\$16.44				
					(8)				
					(9)				
Number of existing RCEs in Black Diamond		1,093			2023m				
Projected total RCEs at build out		6,222							
Projected number of RCEs per quarter	2018-2020	75							
Projected number of RCEs per year		300							
Projected number of RCEs per quarter	2020 to buildout	50							
Projected number of RCEs per year		200							
Start Illustration for Capital Recovery									
Cash Flow Projection	Number of Years	Year	Projected RCEs	Annual Average Funds Collected per Month- Class E Assets	Annual Average Funds Collected per Month- Class 10 Assets	Annual Average Funds Collected per Month- Class 25 Assets	Total Monthly MCCR	Total funds collected this year	Total funds recovered under the Contract
	1	2018	1243	\$10,172			\$8.18	\$61,094	\$10,172
	2	2019	1543	\$12,627			\$8.18	\$151,528	\$121,703
	3	2020	1843	\$15,082			\$8.18	\$180,990	\$342,696
	4	2021	2043	\$16,719			\$8.18	\$200,630	\$543,321
	5	2022	2243	\$18,356			\$8.18	\$220,271	\$763,592
	6	2023	2443	\$19,993			\$8.18	\$239,912	\$1,003,508
	7	2024	2643	\$21,629			\$8.18	\$259,553	\$1,263,056
	8	2025	2843	\$23,266			\$8.18	\$279,193	\$1,542,249
	9	2026	3043	\$24,903			\$8.18	\$298,834	\$1,841,083
	10	2027	3243	\$26,540			\$8.18	\$318,475	\$2,159,558
	11	2028	3443	\$28,176			\$8.18	\$338,116	\$2,497,674
	12	2029	3643	\$29,813	\$14,886		\$12.27	\$596,385	\$3,034,058
	13	2030	3843	\$31,450	\$15,703		\$12.27	\$565,832	\$3,599,890
	14	2031	4043	\$33,086	\$16,520		\$12.27	\$595,279	\$4,195,169
	15	2032	4243	\$34,723	\$17,337		\$12.27	\$624,727	\$4,819,896
	16	2033	4443	\$36,360	\$18,155		\$12.27	\$654,174	\$5,474,070
	17	2034	4643	\$37,997	\$18,972		\$12.27	\$683,622	\$6,157,692
	18	2035	4843	\$39,633	\$19,789		\$12.27	\$713,069	\$6,870,761
	19	2036	5043	\$41,270	\$20,606		\$12.27	\$742,516	\$7,613,277
	20	2037	5243	\$42,907	\$21,423		\$12.27	\$771,964	\$8,385,241
	21	2038	5443	\$44,544	\$22,241	\$69,710	\$12.27	\$801,411	\$9,186,652
	22	2039	5643		\$23,058	\$69,710	\$16.44	\$1,113,214	\$10,299,866
	23	2040	5843		\$23,875	\$72,181	\$16.44	\$1,152,668	\$11,452,534
	24	2041	6043		\$24,692	\$74,651	\$16.44	\$1,192,120	\$12,644,654
	25	2042	6222		\$25,424	\$76,863	\$16.44	\$1,227,485	\$13,872,139
	26	2043	6222			\$76,863	\$12.35	\$922,350	\$14,794,482
	27	2044	6222			\$76,863	\$12.35	\$922,350	\$15,716,792
	28	2045	6222			\$76,863	\$12.35	\$922,350	\$16,639,142
	29	2046	6222			\$76,863	\$12.35	\$922,350	\$17,561,492
	30	2047	6222			\$76,863	\$12.35	\$922,350	\$18,483,842
	31	2048	6222			\$76,863	\$12.35	\$922,350	\$19,406,192
	32	2049	6222			\$76,863	\$12.35	\$922,350	\$20,328,542
	33	2050	6222			\$76,863	\$12.35	\$922,350	\$21,250,892
	34	2051	6222			\$76,863	\$12.35	\$922,350	\$22,173,242
	35	2052	6222			\$76,863	\$12.35	\$922,350	\$23,095,592
	36	2053	6222			\$76,863	\$12.35	\$922,350	\$24,017,942
	37	2054	6222			\$76,863	\$12.35	\$922,350	\$24,940,292
	38	2055	6222			\$76,863	\$12.35	\$922,350	\$25,862,642
	39	2056	6222			\$76,863	\$12.35	\$922,350	\$26,784,992
	40	2057	6222			\$76,863	\$12.35	\$922,350	\$27,707,342
	41	2058	6222						(19)

Comments	
Build out level (maximum RCEs)	(1)
SFR plus Commercial at 750 cubic feet for Black Diamond	(2)
Per 2006 agreement based on previous year peak and the most recent calculation by the District	(3)
Per formulas detailed in the Contract	(4)
Projected amount to be recovered	(5)
Estimated Asset costs will change as the planning process matures, Class 10 and Class 25 projections are in 2018 dollars	(6)
PV factor	(7)
Combined Class E and Class 10 MCCR	(8)
Combined Class 10 and Class 25 MCCR	(9)
The funds recovered are calculated and collected quarterly. The illustrations show fund recovery on an annual basis.	(10)
Based on a 6-month collection period in 2018	(11)
Assume 300 connections per year for three years	(12)
Reduce number of connections to 200 per year	(13)
Start Class 10 Asset recovery	(14)
Class E Asset recovery projected to be complete in 21 years	(15)
Start Class 25 Asset recovery	(16)
Class 10 Asset recovery and build out projected in 25 years	(17)
Class 25 Asset recovery projected complete in 39 years	(18)
The MCCR may continue past 2056 as necessary to collect all capital investments made by Soos Creek Water and Sewer District	(19)