

**INTERAGENCY AGREEMENT
BETWEEN SOOS CREEK WATER AND SEWER DISTRICT AND KING COUNTY FOR THE
CONSTRUCTION AND TRANSFER OF KENT CASCADE RELIEF INTERCEPTOR NUMBER 2**

This Interagency Agreement (“Agreement”) is entered into by and between 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.”

RECITALS

This Agreement is made and entered into by and between the District and County for the purposes set forth below.

- A. Soos Creek Water and Sewer District, herein referred to as the District, is a special purpose municipal agency authorized under Title 57 of the Revised Code of Washington, owns and operates a sewage collection system in King County,
- B. The County and District entered into a long-term agreement for sewage disposal on or about August 1, 1963, which was amended in 1992 (the “Soos Creek Basic Agreement”); and,
- C. The County operates the Kent Cascade Relief Interceptor, which connects to the S 277th Interceptor; and,
- D. The District owns sewage force mains which currently discharge up to approximately 10,600 gallons per minute (gpm) into the County’s Kent Cascade Relief Interceptor near the intersection of 116th Avenue SE and SE 256th Street in Kent, Washington; and,
- E. The District periodically prepares Sewer Comprehensive Plans and updates to the Plans, and the District has planned for additional sewer customers in accordance with the adopted land use and comprehensive plans of the cities in which the District provides sewer service; and,
- F. The District and County entered into an Interagency Agreement dated March 21, 2019, to provide capacity in the District’s sewer system to convey flows for the County’s regional sewer customers in the City of Black Diamond; and,
- G. The wastewater flow rate from the County’s customers in Black Diamond are projected at approximately 7,806 gpm at buildout; and,
- H. The District requires additional capacity for wastewater flows, and the County and the District have agreed that after completion of the Project, as defined below, the District can discharge an additional 13,000 gpm into the regional sewage collection system known as the S 277th Interceptor; and,

- I. The Parties agree that a second relief interceptor, the Kent Cascade Relief Interceptor Number 2, must be constructed to provide additional regional capacity; and,
- J. The Kent Cascade Relief Interceptor Number 2 will extend from the S 277th Interceptor to the intersection of SE 256th Street and 116th Avenue SE, more or less. The terminus of the Interceptor will be at a mutually agreed to location on SE 256th Street, east of the intersection with 116th Avenue SE; and,
- K. The Kent Cascade Relief Interceptor Number 2 will be a regional facility owned and operated by the County; and,
- L. The District will act as the lead agency in design, permitting and construction of the Kent Cascade Relief Interceptor Number 2 regional facility, herein referred to as “the Project”; and,
- M. The District will provide the interim funding for the Project; prepare the engineering plans and associated instruments for the Project, contract for services from consultants and enter into contracts with general contractors; and,
- N. The County shall review, and approve the design plans and construction contract for the final design of the Project and jointly plan the Project; and,
- O. The design and construction of the Project will be completed to the satisfaction of the County and in compliance with the County’s design and construction standards; and,
- P. The County has agreed to reimburse the District for the costs to plan, design, permit and construct the Project, subject to the terms and conditions set forth in this Agreement and the Parties agree that the Project shall be designed, constructed, administered, and managed by the District; and,
- Q. The District will transfer ownership of the Kent Cascade Relief Interceptor Number 2 and associated appurtenances to the County upon completion of the Project.

AGREEMENT

1. DEFINITIONS

- 1.1 “Completion” means that all work on the Project, including punch list items is physically completed.
- 1.2 “Construction Contract” means the contract for construction of the Project awarded by the District to the lowest responsible, responsive bidder.
- 1.3 “Construction Drawings” means drawings setting forth in detail the requirements for the construction of the Project including all graphic and pictorial documents depicting the design,

location and dimensions of the Project and includes plans, elevations, sections, details, schedules, and diagrams.

1.4 “Contractor” means the contractor awarded the construction contract to complete the Project.

1.5 “Design Deliverables” means the Basis of Design Report, the thirty (30) percent, sixty (60) percent, ninety (90) percent, and final design drawings, Construction Drawings, Detailed Specifications, and all other design or design related information required to be submitted for approval pursuant to this Agreement.

1.6 “Detailed Specifications” means all written detailed requirements for materials, equipment, construction systems, standards, and workmanship for the construction of the Project.

1.7 “Effective Date” means the date that this Agreement has been fully executed in writing by the authorized representatives of the District and the County.

1.8 “Substantial Completion” means that the County, by written acceptance to the District has full and unrestricted use and benefit of the Project, from an operational standpoint and that only minor incidental work or correction or repair remains, including punch list items, for Completion to be achieved.

2. PURPOSE

The purpose of this Agreement is to set forth the mutual obligations and rights of the District and King County for the design, construction, and transfer of ownership of the Kent Cascade Interceptor Number 2 from the District to the County.

3. DURATION

3.1 This Agreement shall become effective upon the execution of this Agreement and shall remain in effect unless terminated, as provided in Section 11.

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. PROJECT DESIGN

4.1 The District shall be the lead agency responsible for compliance with the State Environmental Policy Act (SEPA) and for contracting for the planning, design, construction and delivery of the Project in accordance with the terms and conditions in this Agreement. The Parties shall appoint one lead representative and one alternate from their agency to represent the Parties in the administration of this Agreement.

4.2 The Parties shall designate their lead representative as their Project Manager. As the lead representative of the Party, the Project Manager shall have the authority to bind their Party to commitments made for Project administrative, technical, and financial issues.

The Parties Project Managers and Alternates for each Party are:

King County WTD Project Manager: Timothy Lowry
tlowry@kingcounty.gov

Alternate: Ann Fowler
afowler@kingcounty.gov

Soos Creek Water and Sewer District Project Manager: Paj Hwang
phwang@sooscreek.com

Alternate: Gregory G. Hill
ghill@sooscreek.com

4.3 The District, in consultation with the County, shall develop a schedule for implementation of this Agreement, including all deliverables. The schedule will be developed within sixty (60) business days of the Effective Date of this Agreement unless a different timeframe is otherwise agreed to in writing.

4.4 The Parties shall establish periodic meetings on a mutually acceptable schedule as needed to facilitate coordination during the Project. The frequency of the Project meetings is intended to be adjusted to meet the demands of the current Project activity. The Parties' Project Manager or their alternate shall be present at all Project meetings.

4.5 The Project Manager shall be responsible for communications throughout their organization.

4.6 The Project Manager shall lead and facilitate presentations and discussions on behalf of their respective organization.

4.7 The Project Manager of each organization shall jointly prepare the Project meeting agendas and establish the meeting venues.

4.8 The Project Manager of each organization shall jointly prepare meeting minute notes, agree on final documents, and distribute to their organization.

4.9 The Project shall be jointly planned by the Parties. The Project's design criteria shall be jointly developed and agreed to by the Parties. The District shall prepare a Basis of Design Report summarizing the planning and design criteria. The Basis of Design Report shall be approved by King County WTD.

4.10 The Project shall be designed in accordance with the County's Specifications and Standard Details. The final Basis of Design Report shall identify any specifications, procedures, or materials that are proposed deviations from the County's standards.

4.11 The engineering deliverables will be prepared under the leadership of the District by their consultant. Carollo Engineers, Inc., herein referred to as "Carollo", is the District's consultant for the 30 percent design drawings and Basis of Design Report for the Project. Carollo's services shall include preparation of a topographic survey and existing underground utility location for the proposed pipeline route. Their deliverables shall also include identifying alternative routes and configurations, a 30 percent design of the selected pipeline route, the hydraulic analysis of the proposed pipeline, identifying constructability issues, list of permits required, coordination with the City of Kent, preliminary opinion of probable project cost, and identification of any required easements. The results of the research and issues identified in the preparation of the deliverables for 30 percent design will be presented in a preliminary Basis of Design Report.

4.12 The County will review the District's consulting agreement with Carollo and may require that additional professional liability insurance be added to said consulting agreement, before the District authorizes Carollo to prepare additional design documents for the Project. If approved by the County, the District shall retain Carollo to provide the 60 percent design drawings, the 90 percent design drawings, final bid ready plans, specifications, and estimate (PS&E), permit applications, support for solicitation of public bidding, and record drawings of the as-constructed facility. Before amending the engineering services agreement with Carollo for Phase 2 engineering services for the Project, the District will obtain the County's approval of a proposed Phase 2 scope of work, schedule, Phase 2 compensation and overall budget for Carollo or other design consultant. The final bid ready Construction Drawings and Detailed Specifications shall include the County's Division 00, Sections 00-22-00 (Non-Discrimination, Equal Employment Opportunity and Small Contractors and Suppliers Requirements and Apprenticeship Requirements), Section 00-46-00 (Escrow Bid Documentation), Section 00-62-00 (Insurance Requirements, in amounts agreed upon by the County), Section 00-72-00 (General Terms and Conditions), and Section 00-73-00 (Supplemental Terms and Conditions).

4.13 Subject to County review and pre-approval, a consultant who specializes in utility pipeline construction shall be retained to conduct an independent constructability review. The Parties shall agree on a consultant and conduct the review prior to soliciting bids for construction of the Project. The Parties may agree to independent constructability and technical review of the Project deliverables at any point during the Project's design.

4.14 The District shall provide the Design Deliverables in pdf format to the County within seven (7) business days of receipt from Carollo. The County shall conduct its plan review and shall issue its written comments on the Deliverables to the District not more than twenty (20) business days from receiving them. The comments shall be in written form such as a spreadsheet, comments made in an MS Word document, revisions tracked in an MS Word document, or pdf drawing editing software.

4.15 The District shall provide written responses to the County's comments on design drawings and other instruments associated with the design of the Project, within twenty (20) business days. The Parties may meet as necessary to discuss their respective comments. The Parties shall endeavor in good faith to mutually resolve any disputes that arise from the review comments.

4.16 The District and County will mutually agree on a consultant to provide construction administration and inspections services for the Project's construction.

4.17 As the Project's lead agency, the District shall execute and administer all contracts with consultants and general contractors for the Project. The general contractor(s) who will construct the pipeline and associated appurtenances will be selected by competitive public bidding. Except as otherwise specified herein, the Parties agree that the Project shall be bid, contracted for, designed, and constructed in accordance with State and local law applicable to District projects.

4.18 The District will ensure that Project construction complies with the Project contract drawings and specifications. County staff may conduct field investigations and inspections, shop drawing reviews, attend Project meetings and meetings with the District as they deem necessary to ensure compliance with the Project's approved design drawings and contract specifications. Any such on-site investigations and inspections will be scheduled and coordinated through the District's Project Engineer/Construction Manager; County staff will communicate with the Contractor only through the District.

4.19 During construction, shop drawings, submittals, Requests for Information (RFIs), Change Orders, and other construction materials requiring County review and input are anticipated. The Parties agree to develop procedures and timelines to distribute and respond to communication during the construction phase of the Project. The Parties anticipate developing the procedures for communication with the assistance of the consultant selected to provide construction administration services.

4.20 The Parties acknowledge that considerable efforts have been made to establish Project parameters, manage risks, and develop cost projections that include reasonable contingencies for the Project's budget. The Parties further acknowledge that unforeseen conditions and unanticipated changes may impact anticipated Project costs. The Parties agree to address changes in the Project's scope, budget and schedule collaboratively and in good faith.

4.21 The District will include the County as a named third-party beneficiary in any District design, engineering and construction management contracts related to the Project. The District shall require that Carollo (and any other design or engineering consultant) and any construction management consultants/contractors include the County in the indemnification and insurance provisions contained in the District's design, engineering and construction management contracts for or related to the Project.

The District and the County do not intend that this Section 4.21 be interpreted to create any obligation, liability, or benefit to any third party, other than the District and the County for purposes of the design and construction of the Project.

5. PERMITS AND CONSTRUCTION

5.1 The District shall secure all permits and property rights required to be obtained from governmental agencies or third parties in connection with the Project, on terms satisfactory to the County.

5.2 If the District and the County determine that any easements or other property rights are necessary for the construction, operation and/or use of the Project, then the District shall acquire such property rights on such terms and conditions approved in writing, in advance by the County. The District shall not acquire any property interests for the Project without the County's approval. At the completion of the Project the District shall assign all easements and other property rights acquired for the Project to the County at no additional cost or expense.

5.3 The District will publicly advertise and solicit bids for the Project in accordance with the District's public contracting procedures and State and local laws applicable to the District's public works projects. After the opening of bids for the Project, the District shall provide the County with a copy of the bid documents, notify the County of the District's determination of the apparent lowest responsible, responsive bidder, and seek County approval to award a contract for construction of the Project.

5.4 If the Parties agree to award a contract for construction of the Project, it shall be awarded to the lowest responsive, responsible bidder (the Contractor). The District shall ensure that the Construction Contract, includes provisions requiring the Contractor to comply with all applicable public works laws and regulations, including, but not limited to, applicable performance and payment bond, prevailing wage, nondiscrimination, retainage, insurance, and workers compensation requirements.

5.5 As soon as reasonably practical following County's approval of an award of contract to the lowest responsible, responsive bidder, the District shall execute a Construction Contract with the contractor and require the Contractor to prosecute the Project diligently and continuously to completion. The Parties agree that materials and equipment incorporated into the Project shall be new unless otherwise agreed to by the County in writing. Because the Project will be constructed for the benefit of the County, the Construction Contract(s) between the District and its contractor(s), shall acknowledge that the County is an intended third-party beneficiary of the Construction Contract. The District shall also require the Contractor to include the County in the indemnification and insurance provisions contained in the Construction Contract(s). The District and the County do not intend that this Section 5.5 be interpreted to create any obligation, liability, or benefit to any third party, other than to the District and the County for purposes of the construction of the Project.

5.6 The District shall cause the Contractor to initiate, maintain and provide supervision of safety precautions and programs in connection with the construction of the Project in accordance with the Construction Contract.

5.7 The District shall use best efforts to cause the Contractor to achieve any milestone dates and Substantial Completion of the Project on or before the dates specified in the Construction Contract. The District shall assess liquidated damages under the Construction Contract for missed milestones dates.

5.8 If not otherwise included in the Contractor's monthly request for payment, the District shall cause the Contractor to submit, with a copy delivered to the County, written monthly progress reports on the contractor's work showing percentages of completion and any actual or potential changes to the Project schedule. The District shall also require the Contractor to maintain at the Project site one record copy of all construction documents, all drawings, specifications, addenda, Change Orders, and other modifications, in good order and marked currently to record changes and selections made during construction together with approved shop drawings, product data, samples and similar required submittals. All such records shall be made available to the County, upon request.

5.9 The County shall have the right to inspect the on-going construction of the Project, the Construction Contract, and all related documents upon reasonable prior notice to the District. In addition, the County shall have the right to have an independent consulting architect, engineer or other appropriate consultant inspect the Project, the Construction Contract, and all related documents. County staff will communicate with the Contractor only through the District. The County's agents, employees and representatives shall comply with Contractor's work site safety requirements in connection with such inspections.

5.10 The District shall require the contractor to remedy, remove, replace, or dispose of unauthorized or defective work or materials in accordance with the Construction Contract.

6. CHANGE ORDERS

6.1 A Change Order may consist of a "District-Initiated Change Order", a "County-Initiated Change Order", a "District/County-Initiated Change Order" or a "Contractor Initiated Change Order." A Change Order may increase or decrease the costs to construct the Project or extend or reduce the time for achieving Substantial Completion or final Completion of the Project.

6.2 All Change Orders on the Project must be in writing and accompanied by a cost evaluation. Except for County-Initiated Change Orders as provided herein, all Change Orders relating to or affecting the Project shall require the mutual approval of the District and the County. Any County-Initiated Change Order shall be implemented by the District.

6.3 The District shall obtain the County's prior written approval before implementing any District-Initiated or Contractor-Initiated Change Order that increases the cost of the Project, or effects a material alteration, or a change that would result in additional working days to the Construction Contract. The County will provide the District with the County's written denial,

approval, or approval with conditions, for each District-Initiated or Contractor-Initiated Change Order as soon as reasonably possible to avoid delay in performance of the Construction Contract.

7. DISTRICT TRANSFER OF INTERCEPTOR TO KING COUNTY

7.1 Upon completion of the construction, testing, and punch lists, the Parties will perform final inspection and commissioning of the pipeline and associated appurtenances for the Kent Cascade Relief Interceptor Number 2.

7.2 Approximately one year after construction is completed, the Parties shall conduct a one-year warranty inspection of the Project's pipeline, associated appurtenances, and restoration. If defects are found in the pipeline or appurtenances, the District shall correct the defects through the one-year warranty provisions with the Contractor(s) and administer the remedies to any defects. All remedies and repairs shall be conducted to the satisfaction of the County. All costs associated with the repairs and remedy which are not the result of a defect shall be considered Project costs that are reimbursed to the District by the County.

7.3 Upon satisfaction of repairs or defects, the District shall prepare a Bill of Sale identifying all assets constructed under this Project. The Bill of Sale will transfer the Project assets to the County upon payment of all remaining funds due the District for reimbursement for this Project.

8. COST REIMBURSEMENT

8.1 Costs incurred by the District to deliver the Project are anticipated to include but are not limited to construction, engineering, environmental, permitting, geotechnical, planning, financial, and specialty discipline consultants. The District shall obtain written pre-approval by the County before incurring any costs for legal services or appraisal services, for which it intends to seek reimbursement. Invoices seeking payment for reimbursement for Contractor and consultant expenses shall not include any Party mark-up. District costs for direct and contracted staff working on the Project shall be reimbursed based on invoices seeking payment by stating the number of labor hours expended on the Project by each employee, their name(s), job title(s), and fully burdened labor rate(s).

8.2 The Parties shall jointly develop a cost tracking and reporting system for the Project costs. Subject to County review and pre-approval, the District may retain a financial consultant to assist in developing and executing the Project cost tracking system.

8.3 The District shall tabulate the costs incurred and submit a quarterly report and invoice to County every ninety (90) calendar days. The County shall pay the invoice within thirty (30) days of receipt. Notice of any potential dispute regarding an invoice shall be made in writing within thirty (30)-days. The Parties will act in good faith to resolve any disputed Project costs. In the event the Parties are unable to resolve Project costs that are in dispute, the issue shall be subject to the dispute resolution process outlined in this Agreement.

8.4 Audit. The County reserves the right to audit the invoices and supporting documentation for purposes of compliance with this Agreement for a period of six years following the completion of the Interceptor under the terms of this Agreement. All books, records, documents, and other material relevant to this Agreement will be retained by the District for six years. The County, Office of the State Auditor, and federal auditors shall have full access and the right to examine any of these materials during this period subject to compliance with governmental regulations.

9. INDEMNIFICATION AND HOLD HARMLESS; RELEASE AND WAIVER.

9.1 The District agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless 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 County negligence. The District's obligations under this subsection shall include:

- a. The duty to promptly accept tender of defense and provide defense to County at the District's own expense;
- b. Indemnification of claims made by the District's own employees or agents; and,
- c. Waiver of the District's 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.

9.2 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.

9.3 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.

9.4 The Parties agree that the provisions of this Section 9 shall survive the expiration or termination of this Agreement. Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Agreement.

9.5 The County's Review Does Not Relieve District. The County's review of and comment on the design and specifications for the Project shall not relieve the District of its responsibility for the said design. In addition, the District acknowledges and agrees that the

County's review, comment, disapproval, approval, or acceptance of any designs, plan specifications, or work plans relating to the Project:

- a. Exist solely for the benefit and protection of King County and its employees and agents;

b. Does not create or impose on King County or its employees and agents any standard or duty of care towards the District, all of which are hereby disclaimed;

c. May not be relied on by the District in determining whether the District has satisfied its obligations under this Agreement; and

d. May not be asserted, nor may the exercise or failure to exercise any such rights by the County and its employees and agents be asserted against the County or its employees and agents by the District, as a defense, legal or equitable, to the District's obligation to fulfill its obligations set forth in this Agreement, notwithstanding any approval of plans or construction by the County or its employees or agents.

10. INSURANCE

10.1 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.

10.2 Minimum Scope and Limits of Insurance:

10.2.1 **Commercial General Liability:** Coverage shall be at least as broad as: Insurance Services Office Form Number 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.

10.2.2 **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.

10.2.3 **Workers’ Compensation:** Workers’ Compensation coverage, as required by the Industrial Insurance Act of the State of Washington.

10.2.4 **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.

10.2.5 **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.

10.3 **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 County and shall be the sole responsibility of the District.

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

10.4.1 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.

10.4.2 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.

10.4.3 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.

10.5 **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.

10.6 **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.

10.7 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.

10.8 **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.

10.9 The 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.

10.10 Alternatively, the District may fulfill the District's insurance obligations contained in this Agreement by maintaining membership in a risk pool authorized by applicable law. If the District chooses this alternative, then the County understands that the District is not able to name the County as an "additional insured" under the liability coverage provided by the risk pool.

10.11 In addition to the above, the District shall require the Contractor to carry and maintain the insurance specified in the County's Division 00, Section 00-62-00 in the amounts specified and agreed upon by the County. The County shall be named as an Additional Insured for the specific insurance coverages.

11. TERMINATION

11.1. **Termination for Default.** Either Party may terminate this Agreement, in whole or in part, in writing, if the other Party substantially fails to fulfill any or all of its obligations under this Agreement through no fault of the other Party, provided that insofar as practicable, the Party terminating the Agreement shall give written notice of intent to terminate at least thirty (30) calendar days prior to the date of termination stating the manner in which the Party has failed to perform the obligations under this Agreement; and an opportunity for the Party to cure the default within at least thirty (30) calendar days of the notice of intent to terminate. In

such case, the Notice of Termination will state the time period in which cure is permitted and any other appropriate conditions. If the Party receiving the notice fails to remedy the default or the breach to the satisfaction of the other Party within the time period established in the Notice of Termination or any extension thereof, granted by the Party not at fault, this Agreement will be deemed terminated.

11.2. Termination by Mutual Written Agreement. This Agreement may be terminated in its entirety at any time by written agreement that is executed by both Parties, subject to the provisions of Section 11.3.

11.3. Duties of Parties upon Termination for Default or Mutual Agreement. Upon termination of this Agreement for default or by mutual written agreement, the Parties agree to work together cooperatively to develop a coordinated plan for transferring work completed up to the time of termination and determining reasonable contract close-out costs. A termination by any Party shall not extinguish or release either Party from liability, claims or obligations to third parties existing as of the time of termination. Any costs incurred prior to proper notification of termination will be borne by the Parties in accordance with the terms of this Agreement. The Indemnification and Insurance provisions set forth in this Agreement and all remedial provisions shall survive termination of this Agreement.

11.4. In addition to termination as set forth above, the County or the District may terminate this Agreement, in whole or in part, in writing, for lack of appropriation. If expected or actual funding is withdrawn, reduced, or limited in any way, either Party may, upon written notice to the other Party, terminate this Agreement in whole or in part. Such termination shall be in addition to the Parties' rights to terminate upon mutual written agreement or for default.

11.5. If the Agreement is terminated for non-appropriation:

a. The County will be liable only for payment in accordance with the terms of this Agreement for work and/or services satisfactorily performed prior to the effective date of termination; and

b. Payment, if any, associated with such termination shall not exceed the appropriation for the biennium in which termination occurs; and

c. The District shall be released from any obligation to provide further work under the Agreement affected by the termination.

11.6. Duties of Parties upon Termination for Non-Appropriation. Unless the County directs otherwise, after receipt of a written Notice of termination for non-appropriation the District shall promptly: (a) stop performing work and direct any consultants and contractors to stop performing work as specified, on the date, and as specified, in the notice of termination; (b) place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the work not terminated and direct any consultants and contractors to do the same; (c) cancel all orders and contracts, upon terms acceptable to the County, to the extent that they relate to the performance of work

terminated; (d) assign, as specifically requested by the County, all of the rights, title, and interest of District in all orders, properties and contracts; (e) take such action as may be necessary or as directed by the County to preserve and protect the work and any other property related to this Project; and (f) take any other steps required by the County with respect to this Project.

12. 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. 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.

13. 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.

14. NOTICES

Unless otherwise directed in writing, any notice or document required by this Agreement shall be emailed, mailed by U.S. First Class Mail, or personally delivered to:

King County
Department of Natural Resources & Parks
Attn: Wastewater Treatment Division Director
KSC-NR-6200
201 S. Jackson St.
Seattle, WA 98104-3855
Email: Bruce.Kessler@kingcounty.gov

Soos Creek Water and Sewer District
General Manager
14616 S E 192nd Street
Renton, WA 98058
Email: wappleton@sooscreek.com

Notices emailed or personally delivered by either Party shall be deemed to have been duly given or served on the date so emailed or delivered. If a Party disputes the delivery or receipt of notice by email then that Party shall bear the evidentiary burden to prove, by a preponderance of the evidence, that such notice was not delivered or received or both. Notices sent by U.S. First Class mail shall be deemed to have been given three (3) business days after

being deposited in the U.S. mail. Either Party may change its address by giving the other written notice of not less than five (5) days prior to the effective date.

15. MISCELLANEOUS PROVISIONS

15.1 **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.

15.2 **Entire Agreement.** The terms and conditions set forth in this Agreement constitute the complete and exclusive statement of the agreement between the Parties with respect to the subject matter contained in this Agreement, and supersedes 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.

15.3 **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.

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

15.5 **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.

15.6 **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.

15.7 **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.

15.8 **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.

15.9 **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.

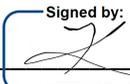
15.10 **No Third-Party Beneficiaries.** This Agreement is entered into solely for the mutual benefit of the District and County. This Agreement is not entered into with the intent that it shall benefit any other person and no other such person shall be entitled to be treated as a third-party beneficiary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

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

15.12 **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: December 12, 2024 By:  Signed by:
6F7ECDE169354C2...
Kamuron Guro, WTD Director
King County

DATED: December 12, 2024 By:  Signed by:
0BF6B62C24F24A9...
Jane Vandenberg, General Manager
Soos Creek Water and Sewer District