1. CALL TO ORDER
2. ROLL CALL
3. PUBLIC COMMENT
4. EXECUTIVE SESSION
5. APPROVAL OF AGENDA
6. OTHER ACTION ITEMS
   a. Motion to adopt Resolution 2019-01 authorizing the Board Chair to execute on behalf of Cascade, in substantially the form of the attached document entitled "Agreement to Coordinate Reclaimed Water" between Cascade and King County Executive.
7. NEXT REGULAR MEETING – January 23, 2019 – Cascade Office – 3:30 p.m.
8. ADJOURN
AGENDA MEMORANDUM

SUBJECT

Motion to adopt Resolution 2019-01 authorizing the Board Chair to execute on behalf of Cascade, in substantially the form of the attached document entitled “Agreement to Coordinate Reclaimed Water” between Cascade and King County.

BACKGROUND

Currently, Washington State regulations (WAC 173-219) allow a reclaimed water generator (such as the King County Wastewater Treatment Division (KCWTD)) to build reclaimed water infrastructure and provide reclaimed water to end use customers anywhere within a water supplier’s service area regardless of the potential effects (financial, environmental, public health) that such service may have on a water supplier who is currently providing that service. Cascade members such as the City of Redmond have already had to address this issue through local actions in order to protect the integrity of their Critical Aquifer Recharge Area (CARA).

Throughout 2017, Cascade, on behalf of its Members, provided detailed comments to the Department of Ecology during its reclaimed water rule-making process which not only articulated Member concerns but also recommended changes to the proposed rule that would have addressed the concerns of water suppliers. Cascade was not successful in its efforts to have Ecology modify its proposed rule. In response to Cascade’s concerns Ecology articulated a “wherever and whenever” approach to the development and use of reclaimed water.

Cascade then moved to draft and support legislation that would address water supplier concerns during the 2018 Legislative Session and was supported by the Washington Association of Water and Sewer Districts (WASWD), the Public Utility District Association (PUDA) and Seattle Public Utilities (SPU). Our legislative efforts were unsuccessful as well.

Following the 2018 Legislative Session, Cascade participated in a series of eight monthly meetings that included King County, SPU, Cascade, Renton and the Soos Creek Water and Sewer District. The goal of these meetings has been and continues to be to see if we can resolve the conflicts between reclaimed water and water suppliers at the County level. While the meetings continue, at the beginning of November 2018, Cascade proposed a “standalone” agreement to KCWTD. The result of that effort is before you as an “Agreement to Coordinate Reclaimed Water” between Cascade and King County.

A very brief summary of the key sections follows to help you navigate through the agreement.

Sec 1.04: If the Board decides to support entering into the Agreement (and the County does as well) then Cascade will not pursue reclaimed water legislation for the term of the agreement.

Sec 2.01: If the Agreement is executed the County will not add new reclaimed water customers or end uses with a Cascade Member’s service area until and unless an Interlocal Agreement (ILA) has been executed between the County and a specific Cascade Member.

Sec 2.02 Existing reclaimed water customers are grandfathered.
Sec 2.04: Template for a reclaimed water ILA – to be worked on over the next two years and at a minimum include all elements specified in 2.04.

Sec 2.05 Allows a Cascade Member and the County to add a new reclaimed water customer absent an ILA if both parties agree.

Sec 3.01 Is about the term of the agreement and “deliverables” by King County and is connected to both parts of Recital E (see immediately below). The agreement stays in place until the King County Executive has transmitted the following documents to the County Council for action with a recommendation of formal approval or adoption: 1) the County's Wastewater System-wide Comprehensive Plan, either as an independent document or as an update or amendment of the 1999 Regional Wastewater Services Plan, and 2) a proposed ordinance amending existing King County Code section 28.86.100 (Water Reuse Policies) to include the Reclaimed Water Policies called for in Motion 13483. If the County hasn’t delivered on these two items by the end of 2026, then the agreement expires.

Recital E (first sentence): The Wastewater Systemwide Comprehensive Plan is a multiyear, multimillion dollar planning effort to set the course for the Wastewater Treatment Division (WTD) for the next 10-40 years. The ultimate product (the Plan) is intended to amend the current Regional Wastewater Services Plan (RWSP) (adopted in 1999 runs till 2030). Reclaimed Water is identified as an element in this multi-year planning process.

Recital E (second sentence): King County Motion 13483/Reclaimed Water Policies. This motion was adopted in 2011 by the King County Council and directed the development of reclaimed water policies addressing the following four issues: a) policies to guide whether to proceed with a reclaimed water project as compared to another approach that could yield similar outcomes; b) policies to guide the financing of any expansion of the County’s reclaimed water program; c) policies to guide how costs and benefits of reclaimed water projects should be allocated; and d) policies to guide how reclaimed water should be priced, such as full-cost recovery or some other approach. To date these policies have not been adopted.

Section 4.10 Dispute Resolution – calls for stepped approach: 1) meetings and discussions; 2) mediation with costs borne equally by both parties; and 3) litigation (see section 4.01 which sets venue and allows for specific performance).

**PROCUREMENT PROCESS**

Not applicable.

**FISCAL IMPACT**

None.

**OPTIONS**

1. Approve Motion to adopt Resolution 2019-01 authorizing the Board Chair to execute on behalf of Cascade, in substantially the form of the attached document entitled "Agreement to Coordinate Reclaimed Water" between Cascade and King County.

2. Do not approve motion to adopt Resolution No. 2019-01 and provide direction to staff.
RECOMMENDED ACTION

Approve Motion to adopt Resolution 2019-01 authorizing the Board Chair to execute on behalf of Cascade, in substantially the form of the attached document entitled "Agreement to Coordinate Reclaimed Water" between Cascade and King County.

ATTACHMENTS

1. Resolution No. 2019-01
2. Agreement to Coordinate Reclaimed Water between Cascade and King County.
A Resolution of the Board of Directors of the Cascade Water Alliance,
A Washington Municipal Corporation, Authorizing Execution of an Agreement to
Coordinate Reclaimed Water between Cascade and King County

WHEREAS, the Cascade Water Alliance ("Cascade") is a Washington municipal
corporation formed under authority of the Joint Municipal Utilities Authority Act (Chapter 39.106
RCW) to provide water supply to its Members;

WHEREAS, the staffs of Cascade and King County have engaged in lengthy
discussions regarding an approach to coordinate the distribution and use of reclaimed water in
the service areas of Cascade and its Members; and

WHEREA, the staffs of Cascade and King County have reached agreement on a final draft
of an agreement between Cascade and King County for consideration by the Cascade Board of
Directors ("Board").

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF
CASCADE WATER ALLIANCE as follows:

Section 1. Authorization. The Board authorizes the Board Chair to execute on behalf of
Cascade, in substantially the form attached, an Agreement to Coordinate Reclaimed Water
between Cascade and King County.

Section 2. Effect. This Resolution shall be in full force and effect on the date of its adoption.
ADOPTED AND APPROVED by the Board of Directors of the Cascade Water Alliance at a meeting thereof, held the 8th day of January, 2019.

CASCADE WATER ALLIANCE

John Stokes, Chair

Penny Sweet, Vice Chair

Angela Birney, Secretary/Treasurer

Attest – Chuck Clarke, Chief Executive Officer

Members
Yes ______
No ______

Demand Share
Yes ______ %
No ______ %

Include in CWAC?
☐ Yes
☒ No
Agreement to Coordinate Reclaimed Water

This Agreement to Coordinate Reclaimed Water ("Agreement") is dated January 1, 2019 ("Effective Date") and is made by and among King County, a home rule charter county and a political subdivision of the State of Washington ("County") and Cascade Water Alliance ("Cascade"), (collectively, the "Parties," and individually a "Party").

RECITALS

A. Cascade is a municipal corporation comprised of seven Members: the five cities of Bellevue, Issaquah, Kirkland, Redmond, and Tukwila, and the two water-sewer districts of Sammamish Plateau and Skyway ("Members"). These cities and districts formed Cascade as a joint municipal utility services authority under Chapter 39.106 RCW for the purpose of establishing a regional approach to providing a safe, clean, and reliable water supply to residents and businesses. Cascade is governed by a board of directors consisting of representatives appointed from each Member's governing body.

B. Cascade’s regional water service area includes the individual retail service areas of its Members. Each Member owns, operates and maintains its own water distribution systems, including water treatment for independent water sources, maintenance of water quality within reservoirs and distribution systems, and local monitoring of water quality conditions. Cascade Members’ water service areas are included in Attachment 1 to this Agreement.

C. The County owns and operates five wastewater treatment plants, including the South Treatment Plant, Brightwater Treatment Plant, and Carnation Treatment Plant. The County produces Class A reclaimed water at these treatment plants, authorized under permits ST0007445, ST0045498, WA0032182, respectively. The Brightwater and Carnation Plants produce Class A reclaimed water through a process that includes membrane filtration and disinfection. The South Treatment Plant produces Class A reclaimed water through sand filtration and disinfection. By and through a piped conveyance system, filling stations, distribution agents, and other means, the County distributes, sells, or supplies reclaimed water off-site for irrigation, wetland enhancement, and commercial/industrial uses ("Distributes" or "Distribution"). The County’s existing reclaimed water customers and end users or users located in Cascade’s regional water service area are identified on Attachment 2 to this Agreement.

D. The potential benefits of reclaimed water could include reducing wastewater discharges to Puget Sound, protecting the aquatic environment and the region’s freshwater resources, and preserving drinking water that would otherwise be used for irrigation. However, the use of reclaimed water should include consideration of any potential financial, public health, environmental and other impacts and a plan to address any impacts.

E. The County has initiated a system-wide planning effort that is intended to result in submission of a "Wastewater Systemwide Comprehensive Plan" to the Metropolitan King County Council ("County Council") for with a recommendation of formal action. The County is also directed by King County Motion 13483, passed by the County Council on May 31, 2011, to develop "policies to guide planning for reclaimed water" ("Reclaimed Water Policies") that, at a
minimum, address the components in Section B.2.a.-d. of the Motion, and to recommend such reclaimed water Policies for consideration and action by the County Council.

F. The County and Cascade, on behalf of Cascade’s Members, have engaged in a series of good faith negotiations to address issues related to decision-making as to Distribution and use of reclaimed water in the service areas of Cascade’s Members, including through the regional discussions that include other water utilities. The Parties have agreed to enter this Agreement to continue the work to develop a framework for Distribution and use of reclaimed water. This Agreement does not commit the County to amounts in excess of an appropriation.

NOW, THEREFORE, in consideration of the foregoing recitals, incorporated herein, and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

Section 1: Purpose and Intent

1.01 The Parties intend to negotiate and develop an approach to coordinate the Distribution and use of reclaimed water in Cascade’s service area. The Parties will draft an agreement template that the County would enter into with individual water systems, and the template will include a dispute resolution process for resolving disagreements between the County and individual Members ("Template").

1.02 After preparation of the Template, the Parties contemplate that the County will proceed to negotiate and enter into an individual interlocal agreement with each Cascade Member where the County currently Distributes or plans to Distribute reclaimed water to provide specific terms and conditions regarding reclaimed water activities in the applicable Cascade Member’s service area.

1.03 In such negotiations with each Cascade Member, Cascade will continue to support and facilitate such negotiations with the County, assist in resolving any technical or disputed issues and maintaining consistency with Cascade policies, and otherwise support the negotiation, drafting, and execution of an interlocal agreement by and between the County and a Cascade Member.

1.04 The Parties fully commit to the reclaimed water discussions and agree to not pursue reclaimed water legislation in the Washington State Legislature for the term of this Agreement.

Section 2: Reclaimed Water Coordination

2.01 Beginning on the Effective Date of this Agreement, the County will not add new reclaimed water customers or end uses or users inside the service area of a Cascade Member until and unless the County and the relevant Cascade Member have entered an Interlocal Agreement consistent with the Template regarding that subject matter.

2.02 As of the Effective Date, the County’s existing reclaimed water customers and end uses/users located in Cascade’s service area will be exempt, to the extent of the beneficial use or area of use, from the foregoing restriction in section 2.01. Existing customers and end uses/users
of reclaimed water within each Cascade Member service area are listed, along with use quantities and locations, in Attachment 1 to this Agreement.

2.03 Upon execution of this Agreement, the Parties will meet and confer about beginning, scheduling, and planning negotiations and work sessions to prepare the Template.

2.04 The Parties intend to prepare the Template by December 31, 2020 and the Template shall include and address at least the following elements:

- The County’s intended Distribution area for reclaimed water, the Cascade Member’s current and future service area, and terms and conditions for reclaimed water Distribution;
- Planning coordination, including integration of reclaimed water into regional and individual wastewater, water supply, and capital improvement plans;
- Decision-making for reclaimed water within the Cascade Member’s current and future service area and costs and funding of the same;
- Terms and conditions regarding any use agreements or third-party Distribution agents;
- Protection of drinking water sources, and provisions for monitoring, sampling, and protective actions;
- Environmental uses of reclaimed water such as wetlands or streamflow augmentation; and
- Dispute resolution process.

2.05 Notwithstanding the requirements of paragraph 2.01 above, in the event that a Cascade Member and County agree, in writing prior to the termination of this Agreement, as to a new use or end user of reclaimed water at a new location, the Cascade Member and County would attach any and all such “new user” writings as exhibits to the Interlocal Agreement that is later entered consistent with paragraph 2.01. Nothing in this Agreement is intended to terminate or otherwise affect any existing agreement between the County and any Cascade Member.

Section 3: Administrative Provisions

3.01 When both Parties shall have duly approved and signed this Agreement, then this Agreement shall become effective as of January 1, 2019 (“Effective Date”). This Agreement shall terminate upon action by the County Executive to transmit the following documents to the County Council for action with a recommendation of formal approval or adoption: 1) the Wastewater Systemwide Comprehensive Plan, either as an independent document or as an update or amendment of the 1999 Regional Wastewater Services Plan, and 2) a proposed ordinance amending existing King County Code section 28.86.100 (Water reuse policies) to include the Reclaimed Water Policies called for in Motion 13483. In the event that the foregoing events have not taken place by the seventh (7th) anniversary of this Agreement, then this Agreement will terminate on January 1, 2026.

3.02 The Parties acknowledge that nothing in this Agreement shall be construed as limiting the legislative powers of the County Council regarding reclaimed water policies.

3.03 No separate legal or administrative entity is created by this Agreement.
3.04 Any joint or cooperative undertaking resulting from this Agreement does not require the joint financing, budgeting, acquisition, holding or disposal of any real or personal property.

3.05 To the extent necessary, this Agreement shall be administered jointly by the County's Wastewater Treatment Division and the Cascade's Chief Executive Officer.

Section 4: General

4.01 This Agreement is made under, and shall be governed by and construed in accordance with the laws of the State of Washington. Venue and jurisdiction of any lawsuit involving this Agreement shall exist exclusively in state court in King County, Washington. The Parties' obligations under this Agreement are unique and, in the event of a breach, it may be impracticable to measure the resulting damages. Notwithstanding the availability of legal remedies, each Party will be entitled to obtain specific performance, injunctive relief, or other equitable relief requiring the other Party to cure or refrain from repeating any breach or default. Accordingly, each Party expresses waives the defense that a remedy in damages will be adequate and any and all requirements for posting of a bond or other security.

4.02 All notices and/or correspondence hereunder, shall be mailed or hand-delivered and addressed as follows:

To Cascade:  
Chief Executive Officer  
Cascade Water Alliance  
520 112th Ave. NE, Suite 400  
Bellevue, WA 98004

To County:  
King County Executive  
King County Chinook Building  
401 5th Ave. Suite 800  
Seattle, WA 98104

4.03 If any part or provision of this Agreement is held invalid or unenforceable as written, it shall not affect any other part. If any part of this Agreement is held to be unenforceable as written, it shall be enforced to the maximum extent allowed under applicable law.

4.04 The waiver of any breach of this Agreement or failure to enforce any provision of this Agreement shall not waive any later breach.

4.05 The term "Party" as used in this Agreement shall include, but not be limited to, the Party's employees, staff, agents, contractors, sub-contractors and any other persons, parties or entities acting on behalf of or providing services to the Party for the purposes set forth herein.

4.06 This Agreement is made for the sole benefit of the Parties and is not intended to benefit any other person or entity.
4.07 This Agreement may be executed in counterparts, each of which shall be deemed an original and with the same effect as if the Parties had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

4.08 This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations, and understandings. This Agreement and its provisions may be amended, supplemented, or terminated only by a writing duly approved and signed by each Party.

4.09 The Parties represent and warrant this Agreement is duly authorized, that each Party has the full power and authority to enter into this Agreement and to carry out the actions required of them by this Agreement, and all persons signing this Agreement in a representative capacity represent and warrant they have the full power and authority to bind their respective entities.

4.10 It is the Parties' intent to resolve any disputes relating to the interpretation or application of this Agreement informally through meetings and discussions. If unsuccessful, then the Parties agree to submit the dispute to mediation administered by a professional mediator before resorting to a lawsuit. All fees and expenses for mediation shall be borne by the Parties equally. However, each Party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation at the mediation.

4.11 The Parties agree to perform all duties and obligations in this Agreement with due diligence and in good faith. Time is of the essence to perform all duties and obligations in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as set forth below.

CASCADE WATER ALLIANCE

By: ______________________

John Stokes, Chair, Board of Directors

Dated: ______________________

Approval as to form and validity:

Counsel for Cascade Water Alliance

KING COUNTY

By: ______________________

Dow Constantine, County Executive

Dated: ______________________

Approval as to form and validity:

King County Deputy Prosecuting Attorney
ATTACHMENT 1

[Attach water service area map for each Cascade Member.]
ATTACHMENT 2

As of January 1, 2019, the following is a complete and accurate accounting of all existing customers and end uses or users of King County reclaimed water that are located in Cascade’s regional water service area.

[Attach names, location, type of use, quantity of use, size of area of use or application, other specifying information for each customer and end use/user.]
<table>
<thead>
<tr>
<th>Reclaimed Water Use</th>
<th>Type of Use</th>
<th>Annual Volume</th>
<th>Parcel(s) Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>York Pump Station Irrigation</td>
<td>Irrigation</td>
<td>0.01-0.6 MG</td>
<td>272605-9108</td>
</tr>
<tr>
<td>York Reclaimed Water Fill Station</td>
<td>Irrigation, Commercial/Industrial</td>
<td>Varies</td>
<td>Facility: 272605-9108</td>
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<td></td>
<td></td>
<td>0.006 MG (2018)</td>
<td>Use Site: Varies</td>
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<tr>
<td>60 Acres Park/Lake Washington Youth Soccer</td>
<td>Irrigation</td>
<td>3 MG – 33 MG</td>
<td>352605-9074</td>
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<tr>
<td>Association</td>
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<td></td>
<td>942850-0080</td>
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<tr>
<td>Willows Run Golf Course</td>
<td>Irrigation</td>
<td>40 – 70 MG</td>
<td>342605-9062</td>
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<td>Buttonwood Tree Farm</td>
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<td>South Plant/Tukwila</td>
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<td>Tukwila Distribution: Starfire Sports Complex</td>
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<td>Interurban Ave landscape</td>
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<td></td>
</tr>
<tr>
<td>Fosters Golf Course (in development)</td>
<td>Irrigation</td>
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