

RESOLUTION R- 3430

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING AND AUTHORIZING THE MAYOR TO SIGN ON BEHALF OF THE CITY OF KIRKLAND, A SOLID WASTE MANAGEMENT INTERLOCAL AGREEMENT BETWEEN THE CITY OF KIRKLAND AND KING COUNTY.

Whereas, King County and the City of Kirkland are each authorized, pursuant to RCW 39.34, to enter into a Interlocal Agreement for cooperative management of solid waste and its disposal, and

Whereas, both parties desire to do so in conjunction with other cities within King County in order to provide county wide solid waste management and disposal, in accordance with the solid waste management priorities of the State of Washington, established pursuant to Chapter 70.95 Revised Code of Washington, now, therefore,

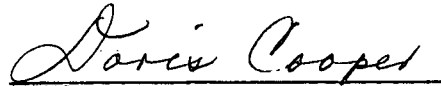
Be it resolved by the City Council of the City Kirkland as follows:

Section 1. The City Council hereby approves in general, and the Mayor is hereby authorized and directed to sign on behalf of the City of Kirkland, that certain "Solid Waste Interlocal Agreement", in form substantially similar to the copy of which is attached to the original of this Resolution, and by this reference incorporated herein.

Section 2. Conformed or certified copies of said agreement shall be filed with the Kirkland City Clerk, with the Clerk of the King County Council, and with the Secretary of State of the State of Washington.

Passed by majority vote of the Kirkland City Council in regular, open meeting this 21st day of June, 1988.

Signed in authentication thereof this 21st day of June, 1988.


MAYOR

ATTEST:


City Clerk

MODEL

Solid Waste Interlocal Agreement

This Agreement is entered into between King County, a political subdivision of the State of Washington and _____, a municipal corporation of the State of Washington, hereinafter referred to as "County" and "City" respectively. This Agreement has been authorized by the legislative body of each jurisdiction pursuant to formal action as designated below:

King County: Ordinance No. _____

City: _____

PREAMBLE

This Agreement is entered into pursuant to chapter 39.34 RCW for the purpose of cooperative management of solid waste in King County. It is the intent of the parties to work cooperatively in establishing a solid waste management plan pursuant to Chapter 70.95 RCW and with emphasis on the established priorities for solid waste management of waste reduction, waste recycling, energy recovery or incineration, and landfilling. The parties particularly support waste reduction and recycling ~~in accordance with the solid waste management priorities of the State of Washington established pursuant to chapter 70.95 RCW.~~ The parties and shall cooperate to achieve the goals for waste reduction and recycling as established by the comprehensive solid waste management plan.

The parties acknowledge their intent to meet or surpass applicable environmental standards with regard to the solid waste system. The parties agree that equivalent customer classes should receive equivalent basic services.

I. DEFINITIONS

For purposes of this Agreement the following definitions shall apply:

"Basic Services" means services provided by the King County Department of Public Works, Solid Waste Division, including the management and handling ~~storage, transportation, processing, or disposal~~ of solid waste. ~~including the recovery of energy resources from such wastes.~~

"Comprehensive Solid Waste Management Plan" means the comprehensive plan for solid waste management as required by RCW 70.95.080.

"Designated Interlocal Forum" means a group formed pursuant to the Forum Interlocal Agreement comprised of representatives of unincorporated King County designated by the King County Council, representatives of the City of Seattle designated by the City of Seattle, and representatives of other incorporated cities and towns within King County that are signators to the Forum Interlocal Agreement.

"Disposal" means the final treatment, utilization, processing, deposition, or incineration of solid waste but shall not include waste reduction or waste recycling as defined herein.

"Diversion" means the directing or permitting the directing of solid waste to disposal sites other than the disposal site designated by King County.

"Energy/Resource Recovery" means "the recovery of energy in a usable form from mass burning or refuse derived fuel incineration, pyrolysis or any other means of using the heat of combustion of solid waste that involves high temperature (above 1200 degrees F) processing." (WAC 173-304-100)

"Moderate Risk Waste" means (a) any waste that exhibits any of the characteristics of hazardous waste but is exempt from regulation under this chapter solely because the waste is generated in quantities below the threshold for regulation and (b) any household wastes which are generated from the disposal of substances identified by the department as hazardous household substances." (RCW 70.105.010)

"Solid Waste" means all putrescible and nonputrescible solid and semisolid wastes, including but not limited to garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and discarded commodities but shall not include dangerous, hazardous or extremely hazardous waste.

"System" means King County's system of solid waste transfer stations, rural and regional landfills, energy/resource recovery and processing facilities as authorized by RCW 36.58.040, and as established pursuant to the approved King County Comprehensive Solid Waste Management Plan.

"Waste Recycling" means "reusing waste materials and extracting valuable materials from a waste stream." (RCW 70.95.030)

"Waste Reduction" means reducing the amount or type of waste generated but shall not include reduction through energy recovery or incineration.

"Landfill" means a disposal facility or part of a facility at which waste is placed in or on land and which is not a land treatment facility."

II. PURPOSE

The purpose of this Agreement is to establish the respective responsibility of the parties in a solid waste management system which includes, but is not limited to: Planning, waste reduction, recycling, and disposal of mixed municipal solid waste, industrial waste, demolition debris and all other waste defined as solid waste by RCW 70.95.030, and moderate risk waste as defined in RCW 70.105.010.

III. DURATION

This Agreement shall become effective on July, ~~January 1~~, 1988, and shall remain in effect through June 30, ~~December 31~~, 2078.

IV. APPROVAL

This Agreement shall be submitted to the Washington State Department of Ecology for its approval as to all matters within its jurisdiction. This Agreement shall be filed with the City Clerk, with the Clerk of the King County Council and with the Secretary of State of the State of Washington.

V. REVIEW AND RENEGOTIATION

5.1 Either party may request review and/or renegotiation of any provision of this Agreement other than those specified in Section 5.2 below during the six-month period immediately preceding the fifth anniversary of the effective date of this Agreement and during the six month period immediately preceding each succeeding fifth year anniversary thereafter. Such request must be in writing and must specify the provision(s) of the Agreement for which review/renegotiation is requested. Review and/or renegotiation pursuant to such written request shall be initiated within thirty days of said receipt.

5.2 Review and/or renegotiation shall not include the issues of system rates and charges, waste stream control or diversion unless agreed by both parties.

5.3 In the event the parties are not able to mutually and satisfactorily resolve the issues set forth in said request within six months from the date of receipt of said request, either party may unilaterally request the Forum to review the issues presented and issue a written recommendation within ninety days of receipt of said request by the Forum. Review of said request shall be pursuant to the procedures set forth in the Interlocal Agreement creating the Forum and pursuant to the Forum's bylaws. The written decision of the Forum shall be advisory to the parties.

5.4 Notwithstanding any other provision in this paragraph to the contrary, the parties may, pursuant to mutual agreement, modify or amend any provision of this Agreement at any time during the term of said Agreement.

VI. GENERAL OBLIGATION OF PARTIES

6.1 KING COUNTY

a. Management. King County agrees to provide county-wide solid waste management services for waste generated and collected within jurisdictions party to this Agreement. The County agrees to dispose of or designate disposal sites for all solid waste including moderate risk waste generated and/or collected within the corporate limits of the City which is delivered to King County in accordance with all applicable federal, state and local environmental health laws, rules, or regulations.

b. Planning. King County shall serve as the planning authority within King County for solid waste including moderate risk waste but shall not be responsible for planning for hazardous or dangerous waste or any other planning responsibility that is specifically designated by State or Federal statute.

c. Operation. King County shall be or shall designate or authorize the operating authority for transfer, processing and disposal facilities, including public landfills, waste reduction or recycling facilities and energy resource recovery facilities as well as closure and post-closure responsibilities for landfills which are or were operated by King County.

d. Collection Service. King County shall not provide solid waste collection services within the corporate limits of the City, unless permitted by law and agreed to by both parties.

e. Support and Assistance. King County shall provide support and technical assistance to the City if the City seeks to establish a waste reduction and recycling program compatible with the County waste reduction and recycling plan. The County shall develop educational materials related to waste reduction and recycling and strategies for maximizing the usefulness of the materials and will make these available to the City for its use. Although, the County will not be required to provide a particular level of support or fund any City activities related to waste reduction and recycling, King County intends to move forward aggressively to establish waste reduction and recycling programs.

f. Forecast. The County shall develop waste stream forecasts as part of the comprehensive planning process and assumes all risks related to facility sizing based upon such forecasts.

g. Facilities and Services. County facilities and services including waste reduction and recycling shall be provided pursuant to the comprehensive solid waste plan. All personal and real property acquired by King County for solid waste management system purposes shall be the property of King County.

6.2 CITY.

a. Collection. The City, an entity designated by the City or such other entity as is authorized by state law shall serve as operating authority for solid waste collection services provided within the City's corporate limits.

b. Disposal. The City shall by ordinance designate the County disposal system for the disposal of all solid waste including moderate risk waste generated and/or collected within the corporate limits of the City and shall authorize the County to designate disposal sites for the disposal of all solid waste including moderate risk waste generated or collected within the corporate limits of the City, except for solid waste which is eliminated through waste reduction or waste recycling activities consistent with the Comprehensive Solid Waste Management Plan. No solid waste generated or collected within the City may be diverted from the designated disposal sites without County approval.

VII. COUNTY SHALL SET DISPOSAL RATES AND
OPERATING RULES FOR DISPOSAL

In establishing or amending disposal rates for system users, the County may adopt and amend by ordinance rates necessary to recover all costs of operation including the costs of handling, processing, disposal, defense and payment of claims, capital improvements, operational improvements and the closure of landfills which are or were operated by King County. King County shall establish classes of service for basic solid waste management services and by ordinance shall establish rates for users of each class.

VIII. LIABILITY

8.1 Except as provided herein, the County shall indemnify and hold harmless the City and shall have the right and duty to defend the City through the County's attorneys against any and all claims arising out of the County's operations and to settle such claims, recognizing that all costs incurred by the County thereby are system costs which must be satisfied from disposal rates as provided in section VII herein. In providing such defense of the City, the County shall exercise good faith in such defense or settlement so as to protect the City's interest. For purposes of this section "claims arising out of the County's operations" shall include claims arising out the ownership, control, or maintenance of the system, but shall not include claims arising out of the City's operation of motor vehicles in connection with the system or other activities under the control of the City which may be incidental to the County's operation.

8.2 If the County is not negligent, the City shall hold harmless, indemnify and defend the County for any property damages or personal injury caused in part or in whole by the City's negligent failure to comply with the provisions of Section 8.5.a.

8.3 In the event the County acts to defend the City against a claim, the City shall cooperate with the County. In the event the City acts to defend the County, the County shall cooperate with the City.

8.4 For purposes of this section, references to City or County shall be deemed to include the officers, employees and agents of either party, acting within the scope of their authority.

8.5.a. All waste generated or collected from within the corporate limits of the City which is delivered to the system for disposal shall be in compliance with the resource conservation and recovery act, as amended (42 U.S.C. 6901 et seq.), RCW 70.95, King County Board of Health Rules and Regulations No. 8, and all other applicable federal, state and local environmental health laws, rules or regulations.

8.5.b. The County shall provide the City with written notice of any violation of this provision. Upon such notice, the City shall take immediate steps to remedy the violation, and prevent similar future violations, to the reasonable satisfaction of King County which may include but not be limited to removing the waste and disposing of it at an approved facility. If, in good faith, the City disagrees with the County regarding the violation, such dispute shall be resolved between the parties in Superior Court. Each party shall be responsible for its attorney's fees and costs. Failure of the City to take the steps requested by the County pending Superior Court resolution shall not be deemed a violation of this agreement; Provided, however, that this shall not release the City for damages or loss to the County arising out of the failure to take such steps if the Court finds that the City violated the requirements to comply with applicable laws set forth in this section.

8.6 City is not held harmless or indemnified with regard to any liability arising under 42 USC § 9601-9675 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) or as hereafter amended or pursuant to any state legislation imposing liability for cleanup of contaminated property, pollutants or hazardous or dangerous substances.

IX. FORUM

By entering into this Agreement, the County and City agree to enter into and execute a Forum Interlocal Agreement. Such agreement shall provide for the establishment of a representative Forum for consideration and/or determination of issues of policy regarding the term and conditions of this Solid Waste Interlocal Agreement.

X. COMPREHENSIVE PLAN

10.1 King County is designated to prepare the comprehensive solid waste management plan and this plan shall include the City's Solid Waste Management Comprehensive Plan pursuant to RCW 70.95.080(3).

10.2 The initial comprehensive plan prepared under the terms of this Agreement shall be submitted to the King County Council and the designated interlocal Forum by December 31, 1988. The plan shall be reviewed and any necessary revisions proposed at least once every three years following the approval of the Comprehensive Plan by the State Department of Ecology. From the effective date of this Agreement until the 1988 plan is approved, the 1974 Solid Waste Management Plan as approved in 1977 by DOE shall be used to meet the requirements of RCW 70.95.185 as directed by the State Department of Ecology. King County shall provide services and build facilities in accordance with the adopted Comprehensive Plan.

10.3 The Comprehensive Plan will promote waste reduction and recycling in accordance with Washington State solid waste management priorities pursuant to chapter 70.95 RCW, at a minimum.

10.4 The comprehensive solid waste management plan will be prepared in accordance with chapter 70.95 RCW and solid waste planning guidelines developed by the Department of Ecology. The plan shall include, but not be limited to:

- a. Descriptions of and policies regarding management practices and facilities required for handling all waste types;
- b. Schedules and responsibilities for implementing policies;
- c. Policies concerning waste reduction, recycling, energy and resource recovery, collection, transfer, long-haul transport, disposal, enforcement and administration;
- d. Operational plan for the elements discussed in Item 3 above.

10.5 The cost of preparation by King County of the Comprehensive Plan will be considered a cost of the system and financed out of the rate base.

10.6 The Comprehensive Plan will be adopted when the following has occurred:

- a. The Comprehensive Plan is approved by the King County Council; and
- b. The Comprehensive Plan is approved by Cities representing three-quarters of the population of the incorporated population of jurisdictions that are parties to the Forum Interlocal Agreement. In calculating the three-quarters, the calculations shall consider only those incorporated jurisdictions taking formal action to approve or disapprove the Plan within 120 days of receipt of the Plan. The 120 day time period shall begin to run from receipt by an incorporated jurisdiction of the Forum's recommendation on the Plan, or, if the Forum is unable to make a recommendation, upon receipt of the Comprehensive Plan from the Forum without recommendation.

10.7 Should the Comprehensive Plan be approved by the King County Council, but not receive approval of three-quarters of the Cities acting on the Plan, and should King County and the Cities be unable to resolve their disagreement, then the Comprehensive Plan shall be referred to the State Department of Ecology and the State Department of Ecology will resolve any disputes regarding Plan adoption and adequacy by approving or disapproving the Comprehensive Plan or any part thereof.

10.8 King County shall determine which cities are affected by any proposed amendment to the Comprehensive Plan. If any City disagrees with such determination, then the City can request that the Forum determine whether or not the City is affected. Such determination shall be made by a two-thirds majority vote of all representative members of the Forum.

10.9 Should King County and the affected jurisdictions be unable to agree on amendments to the Comprehensive Plan, then the proposed amendments shall be referred to the Department of Ecology to resolve any disputes regarding such amendments.

10.10 Should there be any impasse between the parties regarding Plan adoption, adequacy, or consistency or inconsistency of any permits or programs adopted or proposed are consistent with the Comprehensive Plan, then the Department of Ecology shall resolve said disputes.

XI. FORCE MAJEURE

The parties are not liable for failure to perform pursuant to the terms of this Agreement when failure to perform was due to an unforeseeable event beyond the control of either party to this Agreement.

XII. MERGER

This Agreement merges and supersedes all prior negotiations, representation and/or agreements between the parties relating to the subject matter of this Agreement and constitutes the entire contract between the parties except with regard to the provision of the Forum Interlocal Agreement.

XIII. WAIVER

No waiver by either party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach whether of the same or a different provision of this Agreement.

XIV. THIRD PARTY BENEFICIARY

This Agreement is not entered into with the intent that it shall benefit any other entity or person except those expressly described herein, and no other such person or entity shall be entitled to be treated as a third party beneficiary of this Agreement.

XV. SEVERABILITY

If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

XVI. NOTICE

IN WITNESS WHEREOF this Agreement has been executed by each party on the date set forth below:

CITY

KING COUNTY

MAYOR _____

KING COUNTY EXECUTIVE _____

DATE: _____

DATE: _____

PURSUANT TO ORDINANCE NO. _____

PURSUANT TO ORDINANCE NO. _____

CLERK - ATTEST _____

CLERK - ATTEST _____

APPROVED AS TO FORM

APPROVED AS TO FORM

CITY ATTORNEY _____

KING COUNTY DEPUTY PROSECUTING ATTORNEY _____

DATE: _____

DATE: _____

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