

RESOLUTION R-4936

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING AN INTERLOCAL AGREEMENT WITH THE CITY OF BELLEVUE FOR PROVIDING SANITARY SEWER SERVICE TO THE SOUTH KIRKLAND PARK AND RIDE GARAGE.

WHEREAS, the South Kirkland Park and Ride Project ("Project") will be located on property that is partly in the City of Kirkland ("Kirkland") and partly in the City of Bellevue ("Bellevue"), and will include construction of multifamily market rate housing, affordable housing, a 3.25 story parking garage and other improvements; and

WHEREAS, the parking garage portion of the Project will be located on the portion of the property that is in Bellevue; and

WHEREAS, Kirkland has sanitary sewer connections available for providing sanitary sewer service to parking garage portion of the Project located in Bellevue, and connecting to the Kirkland facilities will be more economically and technologically efficient than connecting to Bellevue's sewer facilities; and

WHEREAS, Kirkland and Bellevue agree that Kirkland is in the best position to provide sanitary sewer service to the parking garage portion of the Project;

WHEREAS, Chapter 39.34 RCW authorizes the parties to enter into an interlocal cooperation agreement to perform any governmental service, activity or undertaking which each contracting party is authorized by law to perform;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City of Kirkland an interlocal agreement substantially similar to that attached as Exhibit "A", which is entitled "Intergovernmental Cooperation Agreement between the City of Bellevue and the City of Kirkland for Providing Sanitary Sewer Service to South Kirkland Park and Ride Garage."

Passed by majority vote of the Kirkland City Council in open meeting this 4th day of September, 2012.

Signed in authentication thereof this 4th day of September, 2012.


MAYOR

Attest:


City Clerk

**INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN THE CITY OF
BELLEVUE AND THE CITY OF KIRKLAND**

FOR

**PROVIDING SANITARY SEWER SERVICE TO SOUTH KIRKLAND PARK AND
RIDE GARAGE**

This Intergovernmental Cooperation Agreement (“Agreement”) effective this _____ day of _____, 2012, is entered into between the CITY OF BELLEVUE, a Washington municipal corporation (“Bellevue”) and the CITY OF KIRKLAND, a Washington municipal corporation (“Kirkland”), regarding the provision of sanitary sewer services to the South Kirkland Park and Ride project.

RECITALS

WHEREAS, Bellevue is a non-charter optional municipal code city incorporated under the laws of the State of Washington, with authority to enact laws and enter into agreements to promote the health, safety, and welfare of its citizens and for other lawful purposes; and

WHEREAS, Kirkland is a non-charter optional municipal code city incorporated under the laws of the State of Washington, with authority to enact laws and enter into agreements to promote the health, safety, and welfare of its citizens and for other lawful purposes; and

WHEREAS, King County Metro Transit (“KCMT”) owns a parcel of land measuring approximately 3.8 acres at the NE corner of 108th Avenue and NE 38th Place (the “Property”), which parcel is split by the jurisdictional boundary between Bellevue and Kirkland; and

WHEREAS, KCMT has operated the South Kirkland Park and Ride (“SKPR”) on the Property since 1978; and

WHEREAS, KCMT has applied to construct improvements on the SKPR facility, including construction of multifamily housing, affordable housing, a 3.25 story parking garage and related improvements; and

WHEREAS, the proposed multifamily and affordable housing will be on the west side of the Property on the Kirkland Portion of the Property; and

WHEREAS, the proposed parking garage will be located on the southeast corner of the Property and oriented in an east-west direction along 108th Avenue NE on the Bellevue portion of the Property. The east and south boundaries of the SKPR within Bellevue’s jurisdiction contain ascending steep slopes (over 40 percent slopes), which are deemed critical areas under Bellevue’s Land Use Code, Part 20.25H; and

WHEREAS, Bellevue's Utilities Department provides sanitary sewer services to residents and ratepayers within the City of Bellevue corporate limits and Kirkland's Public Works Department provides sanitary sewer service to residents and ratepayers within the City of Kirkland corporate limits; and

WHEREAS, the nearest sanitary sewer to the SKPR in Bellevue is a Metro trunk line located above the steep slope critical area to the east of the SKPR. Providing sanitary sewer to the proposed parking garage would require constructing a line to connect the proposed parking garage to the Metro trunk line. This construction would require disturbing the steep slope critical area, and the corresponding elevation of the new sanitary sewer line would require installation of pumping facilities to pump effluent uphill to the Metro trunk line; and

WHEREAS, Kirkland provides sanitary sewer to the SKPR and has connections available on NE 38th Street that could provide sanitary sewer service to that portion of the proposed parking garage located within Bellevue's jurisdiction; and

WHEREAS, based on the potential construction impacts to the steep slope critical area and the requirement to pump effluent to address grade change challenges, it is economically and technologically inefficient for Bellevue to provide sanitary sewer service to the proposed parking garage; and

WHEREAS, the City of Bellevue and the City of Kirkland both strive to provide the most efficient means of providing sanitary sewer service to their residents and ratepayers; and

WHEREAS, in support of the multi-jurisdictional cooperative efforts for this Essential Public Facility the parties agree that Kirkland would be best able to provide sanitary sewer service for the proposed parking garage to be constructed on the property; and

WHEREAS, the Kirkland and Bellevue are authorized to enter into this Agreement pursuant to and in accordance with the State Interlocal Cooperation Act, Chapter 39.34 RCW.

NOW, THEREFORE, in consideration of mutual promises and covenants contained herein, the parties agree to the terms and conditions as follows:

1.0 Provision of Sanitary Sewer Service

1.1. Bellevue authorizes Kirkland to provide sanitary sewer service for that portion of the SKPR located within Bellevue's jurisdiction. See Attachment A to this Agreement.

1.2. Kirkland agrees to do all things necessary and/or appropriate to provide sanitary sewer services for that portion of the SKPR property that exists within Bellevue's jurisdiction.

1.3. As the designated provider of sanitary sewer services, Kirkland shall process all permits and approvals required for sanitary sewer service connection and/or operation required for redevelopment of the SKPR.

2.0 Indemnification

2.1. Kirkland shall indemnify, defend and hold harmless Bellevue, its employees, servants, and agents from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses (including without limitation, attorneys' and expert witness fees) arising or growing out of or in connection with or related to, either directly or indirectly the provision of sanitary sewer service to the SKPR, except to the extent such claims arise from the sole or partial negligence, error or omissions of Bellevue, its employees, servants, and agents. Kirkland agrees that this its obligations under this subparagraph extend to any claim, demand and/or cause of action brought by or, or on behalf of, any of its employees or agents. For this purpose, Kirkland, by mutual negotiation, hereby waives, as respects Bellevue, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event Bellevue incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from Kirkland.

2.2. Bellevue shall indemnify, defend and hold harmless Kirkland, its employees, servants, and agents from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses (including without limitation, attorneys' and expert witness fees) arising or growing out of or in connection with or related to, either directly or indirectly the provision of sanitary sewer service to the SKPR, except to the extent such claims arise from the sole or partial negligence, error or omissions of Kirkland, its employees, servants, and agents. Bellevue agrees that this its obligations under this subparagraph extend to any claim, demand and/or cause of action brought by or, or on behalf of, any of its employees or agents. For this purpose, Bellevue, by mutual negotiation, hereby waives, as respects Kirkland, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event Kirkland incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from Bellevue.

3.0 General Provisions

3.1 This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of Washington. Venue for any action under this Agreement shall be King County, Washington.

3.2 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of Bellevue and Kirkland.

3.3 This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

3.4 This Agreement has been reviewed and revised by legal counsel for all parties and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Agreement. These parties intend this Agreement to be interpreted to the full extent authorized by applicable law.

3.5 This Agreement, including its exhibits, may be amended only by a written instrument executed by each of the parties hereto.

3.6 This Agreement constitutes the entire agreement of the parties with respect to the subject matter of this Agreement, and supersedes any and all prior negotiations (oral and written), understandings and agreements with respect hereto.

3.7 This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all counterparts together shall constitute by tone and the same instrument.

3.8 This Agreement shall take effect upon execution of the Agreement after authorization by Bellevue's City Council and Kirkland's City Council. This Agreement shall remain in effect until terminated by either party by 180 days prior written notice to the other party.

3.9 A copy of this Agreement shall be filed with the Bellevue and Kirkland City Clerks and the County Auditor.

4. **Notices.** All notices required under this Agreement shall be deemed sufficient if sent in writing by U.S. Mail or by electronic mail. All notices shall be delivered to the following addresses or to any other or additional addresses as may be specified from time to time by notice to either party. Notices shall be deemed received on the day sent electronically or 3 business days after the notice is placed in the U.S. Mail

Bellevue: Utilities Director
City of Bellevue
P.O. Box 90012
Bellevue, WA 98009-9012

With a copy to: City Attorney
City of Bellevue
P.O. Box 90012
Bellevue, WA 98009-9012

Kirkland: Public Works Director
City of Kirkland
123 5th Avenue
Kirkland, WA 98033

With a copy to: City Attorney
City of Kirkland
123 5th Avenue
Kirkland, WA 98033

IN WITNESS WHEREOF, each of the parties has executed this Agreement by having its authorized representative affix his/her name in the appropriate space below:

CITY OF BELLEVUE

CITY OF KIRKLAND

By: _____

By: _____

Title: City Manager

Title: City Manager

Date: _____

Date: _____

Approved as to form:

Approved as to form:
