

ORDINANCE NO. 835

AN ORDINANCE of the City of Kirkland, Washington, authorizing the execution of a contract for sewage disposal with the Municipality of Metropolitan Seattle containing provision for reimbursement to the city for the use of certain city sewerage facilities.

BE IT ORDAINED by the Mayor and City Council of the City of Kirkland as follows:

Section 1. The Mayor and Clerk are hereby authorized and directed on behalf of the City of Kirkland to enter into, execute and deliver a contract with the Municipality of Metropolitan Seattle which shall be substantially in the form set forth in Exhibit "A" attached hereto and by this reference made a part hereof.


Section 2. Said contract shall be executed in ten counterparts and shall bear the date of and be effective upon its execution by the Municipality of Metropolitan Seattle.

Section 3. This ordinance shall take effect upon its passage and publication in the manner provided by law.

ADOPTED by the Council of the City of Kirkland at a regular meeting thereof and approved by its Mayor this 1st day of May, 1961.


Mayor

ATTEST:


George A. Compton
City Clerk


I hereby certify that the foregoing is a true and correct copy of an Ordinance of the City of Kirkland and that the same was published or posted according to law, said Ordinance being No. 835 and entitled "An Ordinance as above."
 City Clerk

EXHIBIT A

AGREEMENT FOR SEWAGE DISPOSAL

THIS AGREEMENT made and executed this 5TH day of MAY, 1961, between the CITY OF KIRKLAND, a municipal corporation of the State of Washington, hereinafter referred to as the "City" and the MUNICIPALITY OF METROPOLITAN SEATTLE, a municipal corporation of the State of Washington, hereinafter referred to as "Metro,"

W I T N E S S E T H:

WHEREAS, the public health, welfare and safety of the residents of the City and the residents of the metropolitan area require the elimination of existing sources of water pollution and the preservation of the fresh and salt water resources of the area; and

WHEREAS, growth of population, topographic conditions and preservation of water resources require that certain major sewage disposal works be constructed and operated and that the cities and special districts within the metropolitan area dispose of their sewage in accordance with a comprehensive plan for the metropolitan area; and

WHEREAS, Metro was established by vote of the people in the metropolitan area pursuant to Chapter 35.58 RCW for the purpose of performing the function of metropolitan sewage disposal, has adopted a comprehensive plan for the disposal of sewage from the metropolitan area and intends to develop the facilities needed to carry out such plan and to issue revenue bonds to finance such development; and

EXHIBIT A

WHEREAS, to carry out the purposes of Metro and perform its authorized function and to provide for the disposal of sewage from the City into the metropolitan sewage disposal system it is necessary that a contract be now entered into establishing certain rights and duties of the parties incident thereto;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, IT IS HEREBY AGREED as follows:

Section 1. Definition of Terms. The following words and phrases used in this contract shall have the meanings hereinafter set forth in this section:

(a) The words "Comprehensive Plan" shall mean the Comprehensive Sewage Disposal Plan for the metropolitan area adopted in Resolution No. 23 of the Municipality of Metropolitan Seattle and as same may be hereafter amended from time to time in the manner required by law.

(b) The words "Metropolitan Sewerage System" shall mean all of the facilities to be constructed, acquired or used by Metro as a part of the Comprehensive Plan. The Metropolitan Sewerage System shall generally include sewage disposal facilities with capacity to receive sewage from natural drainage areas of approximately one thousand acres or more. The Metropolitan Sewerage System shall thus include trunk or interceptor sewer facilities extending to a point within each tributary, and natural drainage area, where not more than one thousand acres remain to be served beyond the upper terminus of such trunk or interceptor sewer.

- (c) The words "Local Sewerage Facilities" shall mean all facilities owned or operated by the Participant for the local collection of sewage to be delivered to the Metropolitan Sewerage System.
- (d) The words "Metropolitan Area" shall mean the area contained within the boundaries of the Municipality of Metropolitan Seattle as now or hereafter constituted.
- (e) The word "Participant" shall mean each city, town, county, sewer district, municipal corporation, person, firm or private corporation which shall dispose of any portion of its sanitary sewage into the Metropolitan Sewerage System and shall have entered into a contract with Metro providing for such disposal.
- (f) The words "Residential Customer" shall mean a single family residence billed by a Participant for sewerage charges.

Section 2. Delivery and Acceptance of Sewage. From and after July 1, 1962, the City shall deliver to the Metropolitan Sewerage System all of the sewage and industrial wastes collected by it and Metro shall accept the sewage and wastes delivered for treatment subject to such reasonable rules and regulations as may be adopted from time to time by the Metropolitan Council. Metro shall not directly accept sewage or wastes from any person, firm, corporation or governmental agency which is located within the boundaries of or is delivering its sewage into the Local Sewerage Facilities of any Participant without the written consent of such Participant.

Section 3. Construction of Facilities. Metro shall construct, acquire or otherwise secure the right to use all facilities required for the disposal of sewage delivered to Metro pursuant to this Agreement and shall perform all services required for the maintenance, operation, repair, replacement or improvement

of the Metropolitan Sewerage System, including any additions and betterments thereto.

Section 4. Connection of Local Sewerage Facilities to the Metropolitan Sewerage System. Local Sewerage Facilities of the City shall be connected to the Metropolitan Sewerage System at such time as any portion of the Metropolitan Sewerage System shall be available to receive sewage collected by such facilities. Metro shall, at its sole expense, connect those Local Sewerage Facilities of the City which are now in existence or which shall be constructed in accordance with the rules and regulations of Metro prior to the availability of the Metropolitan Sewerage System. Local Sewerage Facilities constructed after the Metropolitan Sewerage System shall have been made available to the area served by such Local Sewerage Facilities shall be connected to the Metropolitan Sewerage System at the expense of the Participant in accordance with the rules and regulations of Metro.

Section 5. Payment for Sewage Disposal. For the disposal of sewage collected by the City and delivered to Metro, the City shall pay to Metro on or before the last day of each month during the term of this agreement, commencing with the month of July, 1962, a sewage disposal charge determined as provided in this Section 5.

1. For the quarterly periods ending March 31, June 30, September 30 and December 31 of each year every Participant shall submit a written report to Metro setting forth (a) the number of Residential Customers billed by such Participant for local sewerage charges as of the last day of the quarter, (b) the total number of all customers billed by such Participant as of such day and (c) the total water consumption during such

quarter for all customers billed by such Participant other than Residential Customers. The quarterly water consumption report shall be taken from water meter records and may be adjusted to exclude water which does not enter the sanitary facilities of a customer. Where actual sewage flow from an individual customer is metered, the metered sewage flows shall be reported in lieu of adjusted water consumption. The total quarterly water consumption report in cubic feet shall be divided by 2,700 to determine the number of Residential Customer equivalents represented by each Participant's customers other than single family residences. The first report shall cover the quarterly period ending December 31, 1960 and shall be submitted on or before March 1, 1961. Succeeding reports shall be made for each quarterly period thereafter and shall be submitted within thirty (30) days following the end of the quarter. Metro shall maintain a permanent record of the quarterly customer reports from each Participant.

2. To form a basis for determining the monthly sewage disposal charge to be paid by each Participant during any particular quarterly period Metro shall ascertain the number of Residential Customers and Residential Customer equivalents of each Participant for each such quarterly period beginning with the July-September quarter of the year 1962. This determination shall be made by taking the sum of the actual number of Residential Customers reported as of the last day of the next to the last preceding quarter and the average number of Residential Customer equivalents per quarter reported for the four quarters ending with said next to the last preceding quarter, adjusted to eliminate any Residential Customers or Residential Customer equivalents whose sewage is delivered to a governmental

agency other than Metro or other than a Participant for disposal outside of the Metropolitan Area.

3. For the period from July 1, 1962 to December 31, 1963, the monthly rate for each Residential Customer and Residential Customer equivalent of the City shall be Two dollars (\$2.00) and the monthly sewage disposal charge to be paid by each Participant to Metro shall be obtained by multiplying the number of Residential Customers and Residential Customer equivalents of the Participant as determined in subparagraph 2 of this section by the monthly rate of Two dollars.

4. For each calendar year after the year 1963, the monthly sewage disposal charge payable to Metro shall be determined as follows:

a) Prior to July 1st of each year Metro shall determine its total monetary requirements for the disposal of sewage during the next succeeding calendar year. Such requirements shall include the cost of administration, operation, maintenance, repair and replacement of the Metropolitan Sewerage System, establishment and maintenance of necessary working capital and reserves, the requirements of any resolution providing for the issuance of revenue bonds of Metro to finance the acquisition, construction or use of sewerage facilities, plus not to exceed 1% of the foregoing requirements for general administrative overhead costs.

b) To determine the monthly rate per Residential Customer or Residential Customer equivalent to be used during said next succeeding calendar year, the total monetary requirements for disposal of sewage as determined in subparagraph 4(a) of this section shall be divided by twelve and the resulting quotient shall be divided by the

total number of Residential Customers and Residential Customer equivalents of all Participants ascertained in accordance with subparagraph 2 of this section for the October-December quarter preceding said July 1st; provided, however, that the monthly rate shall not be less than Two dollars (\$2.00) per month per Residential Customer or Residential Customer equivalent at any time during the period ending July 31, 1972.

c) The monthly sewage disposal charge paid by each Participant to Metro shall be obtained by multiplying the monthly rate by the number of Residential Customers and Residential Customer equivalents of the Participant determined as provided in Paragraph 2 of this section. An additional charge may be made for sewage or wastes of unusual quality or composition requiring special treatment, or Metro may require pretreatment of such sewage or wastes. An additional charge may be made for quantities of storm or ground waters entering those Local Sewerage Facilities which are constructed after January 1, 1961 in excess of the minimum standard established by the general rules and regulations of Metro.

5. A statement of the amount of the monthly sewage disposal charge shall be submitted by Metro to each Participant on or before the first day of each month during the term of this agreement commencing with the month of July 1962 and payment of such charge shall be due on the last day of such month. If any charge or portion thereof due to Metro shall remain unpaid for fifteen days following its due date, the Participant shall be charged with and pay to Metro interest on the amount unpaid from its due date until paid at the rate of 6% per annum, and Metro may, upon failure to pay such amount, enforce payment by any remedy available at law or equity.

6. The City irrevocably obligates and binds itself to pay its sewage disposal charge out of the gross revenues of the combined water and sewerage system of the City. The City further binds itself to establish, maintain and collect rates and charges for water and for sewage disposal service sufficient to pay all costs of maintenance and operation of the combined water and sewerage system of the City, including the sewage disposal charge payable to Metro hereunder, and sufficient to pay the principal of and interest on any revenue bonds of the City which shall constitute a charge upon such gross revenue. It is recognized by Metro and the City that the sewage disposal charge paid by the City to Metro shall constitute an expense of maintenance and operation of the combined water and sewerage system of the City prior in lien to any water and sewer revenue bonds of the City to be hereafter issued. It is further recognized that the City shall have the right to fix its own schedule of water and sewerage rates and charges, provided that same shall produce revenue to meet the covenants contained in this agreement.

Section 6. Responsibility of Participant. Each Participant shall be responsible for the delivery to the Metropolitan Sewerage System of sewage collected by such Participant, for the construction, maintenance and operation of Local Sewerage Facilities, and for the payment of all costs incident to the collection of such sewage and its delivery to the Metropolitan Sewerage System.

Section 7. Records. Permanent books and records shall be kept by Metro of the rates established, the volumes of sewage delivered and discharged into the Metropolitan Sewerage System wherever such volumes are measured and the number of Residential Customers and Residential Customer equivalents reported by each Participant, in addition to complete books of account showing all costs incurred in connection with the Metropolitan Sewerage

System. Such records shall be maintained beginning with the commencement of operation of any part of the Metropolitan Sewerage System.

Section 8. Development of Metropolitan Sewerage System.

It is contemplated that the Metropolitan Sewerage System will be developed in stages and the nature of facilities to be constructed, acquired or used and the time of such construction, acquisition or use shall be determined by Metro, it being contemplated that Metro shall ultimately provide sewage disposal service for the entire Metropolitan Area.

Section 9. Use of Facilities Owned or Operated by the

City. Effective July 1, 1962, or such earlier date as may be mutually agreed upon (hereinafter called "takeover date"), Metro shall have the exclusive right to use and the duty to maintain, operate, repair and replace the facilities owned by the City which are described in Exhibit "A" attached hereto and by this reference made a part hereof, subject to the continued availability of such facilities to receive, transport or treat sewage delivered by the City. From and after the takeover date Metro shall acquire, construct, maintain, operate, repair and replace all facilities now or hereafter required for the treatment and disposal of sewage delivered by the City and the City shall make payment for such treatment and disposal as provided in Section 5 of this Agreement.

For the privilege of using the facilities described in Exhibit "A" and for the easement rights hereby granted to Metro by the City of Kirkland as described in Exhibit "B" attached hereto and by this reference made a part hereof, Metro shall pay to the City of Kirkland a total amount of one hundred twenty-one thousand nine hundred dollars (hereinafter called "amount of reimbursement"). If the City shall construct improvements or additions to the

facilities described in Exhibit "A" with the approval of Metro after the date of this Agreement and prior to the takeover date, the City shall be reimbursed for the actual cost thereof in cash within thirty (30) days following the said takeover date in addition to the amount of reimbursement set forth above. The right of Metro to use facilities designated as "temporary" shall expire six months following the date of completion as determined by Metro of permanent metropolitan facilities adequate to replace such temporary facilities. The City shall continue to own the facilities described in this Section 9 and shall continue to pay the principal of and interest on any bonds issued to pay in whole or in part the cost of acquisition and construction of such facilities, provided that facilities which are designated as "permanent" shall be conveyed by the City to Metro by quit claim deed upon payment of all presently outstanding revenue bonds or general obligation bonds of the City secured by or issued to acquire or construct said facilities.

The City shall give written notice to Metro prior to June 1, 1961, setting forth the manner in which the amount of reimbursement shall be paid. The City may elect to receive all or any portion of said amount in cash within thirty (30) days following the date of delivery of revenue bonds issued by Metro for the purpose of providing funds therefor and, in any event, not later than July 1, 1962 (hereinafter called "cash payment date") and may elect to receive any portion which is not paid on said cash payment date together with interest thereon at the rate of 4% per annum from said date, in the form of a credit against the City's monthly sewage disposal charge in equal monthly amounts sufficient to amortize such unpaid amount of reimbursement and interest thereon prior

to July 1, 1977. The City may at any time after the cash payment date elect to receive any unpaid portion of the amount of reimbursement in cash with interest at the rate of 4% per annum to date of final payment by giving written notice to Metro at least one year prior to the date such final payment is to be made.

Section 10. Insurance and Liability for Damages.

Each Participant with a population of less than 100,000 shall secure and maintain with responsible insurers all such insurance as is customarily maintained with respect to sewerage systems of like character against loss of or damage to the respective sewerage facilities of each and against public and other liability to the extent that such insurance can be secured and maintained at reasonable cost. Any liability incurred by Metro as a result of the operation of the Metropolitan Sewerage System shall be the sole liability of Metro and any liability incurred by the City as a result of the operation of the Local Sewerage Facilities of the City shall be the sole liability of the City.

Section 11. Assignment. Neither of the parties

hereto shall have the right to assign this Agreement or any of its rights and obligations hereunder nor to terminate its obligations hereunder by dissolution or otherwise without first securing the written consent of the other party and this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto. In the event that the City should be dissolved, the local sewer facilities owned and operated by the City shall by such act of dissolution be assigned and transferred to Metro subject to any outstanding debts of the City incurred for the construction

or acquisition of such facilities and subject to the obligation of Metro to continue to provide sewer service to the residents served by such local facilities upon payment of the reasonable costs thereof.

Section 12. Effective Date and Term of Contract.

This Agreement shall be in full force and effect and binding upon the parties hereto upon the execution of the Agreement and shall continue in full force and effect for a period of fifty years unless prior to the takeover date Metro shall not have entered into a firm commitment for the sale of revenue bonds to finance any portion of the Comprehensive Plan, then in such event only, this Agreement shall be terminated as of said date. Metro shall make every reasonable effort to secure such a commitment prior to said date.

Section 13. Notice. Whenever in this Agreement

notice is required to be given, the same shall be given by Registered Mail addressed to the respective parties at the following addresses:

Municipality of Metropolitan Seattle
152 Denny Way, Seattle 9, Washington

City of Kirkland
Kirkland, Washington

unless a different address shall be hereafter designated in

writing by either of the parties.

The date of giving such notice shall be deemed to be the date of mailing thereof. Billings for and payments of sewage disposal costs may be made by regular mail.

Section 14. Execution of Documents. This Agreement shall be executed in ten counterparts, any of which shall be regarded for all purposes as one original. Each party agrees that it will execute any and all deeds, instruments, documents and resolutions or ordinances necessary to give effect to the terms of this Agreement.

Section 15. Waiver. No waiver by either party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or a different provision of this Agreement.

Section 16. Remedies. In addition to the remedies provided by law, this Agreement shall be specifically enforceable by either party.


Section 17. Entirety. This Agreement merges and supersedes all prior negotiations, representations and agreements between the parties hereto relating to the subject matter hereof and constitutes the entire contract between the parties concerning the disposal of sewage by the City and acceptance of such sewage by Metro for disposal.

IN WITNESS WHEREOF, the parties hereto have executed

this Agreement as of the day and year first above written.

CITY OF KIRKLAND

By



Byron Baggaley
Mayor

ATTEST:


George A. Compton
City Clerk

MUNICIPALITY OF METROPOLITAN SEATTLE

By


C. Carey Donworth
Chairman of the Council

ATTEST:



Maralyn Sullivan
Clerk of the Council

EXHIBIT "A"

TEMPORARY FACILITIES

FACILITY

Sewage treatment plant and associated improvements located on the following described property situated in King County, State of Washington, to wit:

Beginning at the meander corner between Sections 5 and 8, Township 25 North, Range 5 E.W.M., and running thence along section line north $89^{\circ} 39' 00''$ east 60.15 feet; thence north $22^{\circ} 21' 00''$ west 183.71 feet; thence north $70^{\circ} 04' 15''$ east, 496.71 feet to the true point of beginning; thence continuing north $70^{\circ} 04' 15''$ east, a distance of 319.13 feet; thence north $0^{\circ} 21' 00''$ east a distance of 198.76 feet, thence south $70^{\circ} 04' 15''$ west a distance of 319.13 feet; thence south $0^{\circ} 21' 00''$ west, a distance of 198.76 feet to the true point of beginning.

EXHIBIT "B"

Description of Permanent Sewage Pumping Station Easement

A perpetual easement for the purpose of installing, constructing, maintaining, operating, repairing and replacing an underground sewage pumping station with all connecting sewer lines, manholes, underground power, telephone, water or other utility lines or pipelines and appurtenances thereto, together with the right of ingress and egress to said station and the right to maintain an access stairway over, upon and under the westerly 10 feet of the easement property, said easement property being located in the City of Kirkland, King County, State of Washington, and more particularly described as follows:

Th prt of govt lot 5 sect 5 twp 25 N R 5 E W.M. daf
Beg at the meander cor betw sects 5 and 8 twp 25 N R
5 E W.M.; th N 89°39'00" E along the Sly In of sd govt
lot 5 a distance of 459.32 ft to the Sly production of
the Ely ln of 2nd St; th N 0°21'00" W 273.13 ft to the
SEly ln of 1st Ave as cyed to the City of Kirk and by
dd recdd under aud file No. 3883807 rec of sd co; th N
70°04'15" E along sd SEly ln 95.52 ft; th N 89°39'00"E
210.99 ft to the W ln 3rd St as cyed to the City of
Kirk in said deed; th N 0°21'00" W 60 ft along th W ln
of said 3rd St to the true point of beginning; th S
89°21'00"W 10 ft; th N 0°21'00" W 60 ft; th N 89°39'00"E
10 ft to the W ln of said 3rd St; th N 89°39'00"E 60 ft;
th S 0°21'00"E 60 ft; th S 89°31'00"W 60 ft to T.P.O.B.

reserving, however, to the city all right, title and interest which may be used and enjoyed without interfering with the easement rights herein conveyed and, in particular, to continue to use and maintain as a city street the surface of that portion of said property now used for a street following construction or repair of the pumping station thereunder and the restoration by Metro of any street improvements damaged by such construction or repair.

STATE OF WASHINGTON)
)
COUNTY OF KING) ss.

On this 5 day of May, 1961,
before me personally appeared BYRON BAGGALEY and GEORGE A. COMPTON, to me known to be the Mayor and City Clerk, respectively, of the City of Kirkland, a municipal corporation, and acknowledged the within and foregoing instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Reph. T.
Notary Public in and for the State
of Washington, residing at Kirkland.

STATE OF WASHINGTON)
)
COUNTY OF KING) ss.

On this _____ day of _____, 19____,
before me personally appeared C. CAREY DONWORTH and MARALYN SULLIVAN, to me known to be the Chairman of the Council and Clerk of the Council, respectively, of the Municipality of Metropolitan Seattle, a municipal corporation, and acknowledged the within and foregoing instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State
of Washington, residing at Seattle