

RESOLUTION R- 3826

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND DECLARING THE INTENT OF THE CITY TO ASSUME JURISDICTION AND OWNERSHIP OVER A PORTION OF THE ROSE HILL WATER DISTRICT'S SERVICE AREA, ASSETS, FACILITIES, RESPONSIBILITIES, PROPERTY, AND EQUIPMENT AND TO DISSOLVE THE DISTRICT; AUTHORIZING EXECUTION OF AN ASSUMPTION AGREEMENT WITH REDMOND, BELLEVUE AND THE DISTRICT AND AN OPERATION AGREEMENT WITH REDMOND AND BELLEVUE; AND DIRECTING THE FILING OF A NOTICE OF INTENT WITH THE BOUNDARY REVIEW BOARD FOR KING COUNTY

Whereas, the Rose Hill Water District currently provides water utility service to property within the corporate limits of the Cities of Kirkland, Redmond, and Bellevue; and

Whereas, the City of Kirkland is authorized by Chapter 35.13 A RCW to assume jurisdiction and ownership of a water district's responsibilities, properties, facilities and equipment within or without of the City's boundaries and to contract with respect to the rights, powers, duties and obligations of the City and a water district with regard to the use and ownership of property, the provision of services, the maintenance and operation of facilities, the application and use of assets, the disposition of liabilities and debts, the performance of contractual obligations, and other matters arising out of the inclusion, in whole or in part, of the water district within the City; and

Whereas, in the interest of coordinating and cooperating with other municipalities in the provision of water service and the avoidance of duplication of costs and the joint use of existing and future facilities, the City has held discussions with the District and the Cities of Bellevue and Redmond regarding the assumption of the District by the Cities; and

Whereas, at the request of the Cities, and with the cooperation of the District, a feasibility study entitled, "Assumption Feasibility Study of Rose Hill Water District," and dated September 29, 1989, was prepared by FCS Group,

Inc. and RH2 Engineers and set forth preliminary conclusions and recommendations regarding the feasibility of the Cities' assumption of the District; and

Whereas, the Cities executed an agreement which provided for the Cities to cooperatively pursue the assumption of the District, to undertake additional review and analysis of specific issues relating to the possible assumption of the District by the Cities, and to form committees to accomplish the additional review and analysis; and

Whereas, the Cities and their consultants have completed the additional review and analysis of the specific issues relating to assumption by the Cities, and have transmitted that analysis to the City Council; and

Whereas, the City Council has reviewed the analysis and has determined to proceed with the assumption of a portion of the Rose Hill Water District pursuant to a contract relating to the allocation of the District's service area, assets, facilities, responsibilities, property, and equipment;

Now, therefore, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. Declaration of Intent. The City Council finds that it is in the best interests of the citizens of Kirkland that, pursuant to Chapter 35.13 A RCW, the City assume jurisdiction and ownership over a portion of the Rose Hill Water District's service area, assets, facilities, responsibilities, property, and equipment and dissolve the District. The City Council hereby declares Kirkland's intent to assume such jurisdiction and ownership and to dissolve the District.

Section 2. Assumption and Operation Agreements Approved for Signature. The City Manager is hereby authorized to execute an Assumption Agreement on behalf of the City in substantially the form attached hereto as Exhibit A and incorporated herein by this reference as if set forth in full. The City Manager is also authorized to enter into an operation agreement with the Cities of Redmond and Bellevue for the operation of the Rose Hill Water District facilities in substantially the

form attached hereto as Exhibit B and incorporated herein by this reference as if set forth in full.

Section 3. BRB Notice of Intent. The City Manager is authorized to execute a Notice of Intent to Assume Portions of and to Dissolve the Rose Hill Water District. Pursuant to Chapter 36.93 RCW, the Notice of Intent shall be filed with the King County Boundary Review Board within thirty (30) days after execution of the Assumption Agreement by all parties.

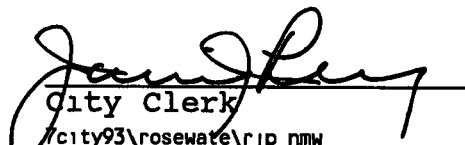
Section 4. Ordinance. Upon receipt of approval for the assumption from King County Boundary Review Board, the City Attorney is directed to prepare the necessary assumption ordinance for Council review and approval.

Passed by majority vote of the Kirkland City Council in regular, open meeting this 20th day of July, 1993.

Signed in authentication thereof this 20th day of July, 1993.


MAYOR Pro Tem

Attest:


City Clerk
/city93\rosewater\rjp nmw

R-3826

EXHIBIT "A"

ASSUMPTION AGREEMENT

For the Assumption

of the

ROSE HILL WATER DISTRICT

By the Cities of

KIRKLAND, REDMOND AND BELLEVUE

July 1993

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EXHIBITS

- A. Assumption Study Agreement**
- B. BRB Notice of Intent**
- C. Joint Facilities**
- D. Kirkland Capital Improvement Projects**
- E. Redmond Capital Improvement Projects**
- F. Interlocal Operation and Maintenance Agreement**
- G. Old Water Allowance**
- H. District Employees**
- I. Employment Offers**
- J. District Manager Employment Agreement**
- K. District Service Area Allocation**
- L. Claims Against the District**

ASSUMPTION AGREEMENT

THIS AGREEMENT is made by and between the City of Kirkland, a municipal corporation in King County, Washington ("Kirkland"), the City of Redmond, a municipal corporation in King County, Washington ("Redmond"), and the City of Bellevue, a municipal corporation in King County, Washington ("Bellevue"), collectively referred to as the "Cities," and Rose Hill Water District, a municipal corporation in King County, Washington ("District"), for the purposes set forth herein

RECITALS:

A The District provides water utility service to the geographic area known as Rose Hill, King County, Washington. Almost all of the District's area is included within the corporate boundaries of the Cities. The Cities are authorized by Chapter 35.13A RCW to assume jurisdiction and ownership of District responsibilities, properties, facilities and equipment within and without their boundaries.

B A study of the feasibility of an assumption of the District by the Cities entitled "Assumption Feasibility Study of Rose Hill Water District" ("Feasibility Study") dated September 29, 1989, was prepared by F.C S Group, Inc ("FCS") and RH2 Engineers ("RH2"). The Feasibility Study set forth preliminary conclusions and recommendations regarding the feasibility of the Cities' assumption of the District

C The Cities executed an Agreement, attached as Exhibit "A," (Assumption Study Agreement") which provided for the Cities to cooperatively pursue the assumption of the District, to undertake additional review and analysis of specific issues relating to the possible

assumption of the District by the Cities, and to form committees to accomplish the additional review and analysis.

D. The Cities and their consultants have completed the additional review and analysis of the specific issues relating to the assumption of the District by the Cities. Based on the recommendations and conclusions of the committees formed for the purpose of studying issues relating to the assumption, the Cities have concluded that the Cities' assumption of the District should proceed.

E As further set forth below, the District and the Cities now agree to proceed with the Cities' assumption of the District pursuant to Chapter 35.13A RCW.

THEREFORE, in consideration of the terms and conditions contained herein, the parties agree as follows

1 Assumption and Dissolution Process.

1.1 Pursuit of Assumption The Cities are authorized by Chapter 39.34 RCW to enter into inter-local agreements for joint action. In addition, the Cities and the District are authorized by RCW 35 13A 070 to enter into contracts relating to the rights, powers, duties and obligations of the Cities and the District with regard to the use and ownership of District property and other matters arising out of the inclusion, in whole or in part, of the District within the Cities. Therefore, the Cities and the District agree to the assumption of the District by the Cities consistent with and pursuant to the terms of this Agreement, any amendments thereto, and Chapter 35 13A RCW, subject to the approval of such assumption by the King County Boundary Review Board ("BRB") on substantially the terms and conditions contained herein.

1.2 Boundary Review Board Notices of Intent. Subsequent to the execution of this Agreement, the Cities and the District agree to cooperatively pursue the assumption and

dissolution of the District by the Cities in accordance with the terms set forth in this Agreement and the procedures set forth in Chapter 35.13A RCW, Chapter 36.93 RCW, and other applicable statutes. The Cities shall file with the BRB, at a mutually agreed time no later than thirty (30) days after the effective date of this Agreement, notices of intent to assume and dissolve the District pursuant to Chapter 36.93 RCW. The notices of intent shall be in substantially the form attached as Exhibit "B." The District agrees that it shall not oppose its assumption by the Cities, and that it shall not file a request for review of the assumption with the BRB on the condition that the assumption proceeds in accordance with the terms of this Agreement and any amendment thereto. Following the filing of the Cities' notices of intent as referenced above, in the event BRB jurisdiction to review the proposed assumption is invoked, the Cities shall coordinate, prepare and present testimony to the BRB regarding the proposed assumption and take all actions necessary to obtain BRB approval of the assumption of the District.

1.3 Dissolution of District In the event that the BRB approves the assumption of the District, the Cities and the District shall cooperatively pursue the dissolution of the District as provided by RCW 35.13A.080 within three (3) months of the assumption date as defined in Section 1.4 herein. After the assumption date and until the dissolution of the District, the District Board of Commissioners shall continue to operate and function to effect the dissolution of the District. Effective upon the assumption date, the District shall initially fund and administer in its Expense Fund the amount of \$100,000 to pay outstanding payables existing as of the assumption date, exclusive of construction costs, and all District costs relating to the dissolution of the District incurred up to the time of dissolution, such as commissioner compensation, expense reimbursement, and consulting costs. Following the dissolution of the District, any balance remaining in such District Expense Fund shall be disbursed in accordance

with the provisions of Section 2 herein to Kirkland and Redmond's respective assumption CIP accounts referenced in Section 4 herein.

1.4 Assumption Date. In the event the BRB approves the assumption of the District, the "assumption date" for the purposes of this Agreement shall be the date established by the BRB when such assumption shall be effective. In the event the BRB does not establish a date upon which the assumption of the District by the Cities is effective, the Cities and the District shall agree upon the assumption date, provided, however, in the event the parties cannot agree upon an assumption date, the assumption date shall be the 90th day following the effective date of BRB approval.

2 Assumption and Distribution of District Assets and Liabilities.

2.1 The parties agree that on the assumption date, or as otherwise provided in this Agreement, the Cities shall assume and be obligated to pay all of the District's debts and liabilities and shall acquire all of the District's assets. Such assumption and acquisition of the District's assets and liabilities shall occur as follows:

2.1.1 The District's assets and liabilities shall be distributed to the Cities so that the equity per meter equivalent is nominally equal between the cities of Kirkland and Redmond. Nominally equal shall mean within \$5.00 per meter equivalent. "Equity per meter equivalent" shall be defined as "total equity" divided by the number of meter equivalents receiving water service from the District as of the assumption date. The respective cities' meter equivalents shall be similarly defined and shall reflect a proportion of allocation of total equity. Contributions in aid of construction (CIAC) shall be defined as the equity account(s) of the District's consolidated balance sheet reflecting the amount(s) of permanent fund capital contributed to the District by District customers, other public agencies, private parties,

developers and builders, and/or obtained through assessments. CIAC shall not be considered revenue on the District's statement of income; it is the contributed source of "total equity" as opposed to "retained earnings." "Retained earnings" shall be defined as an equity account reflecting the accumulated earnings of the District as reported in the historical statements of income. "Total equity" shall be defined as the District's net book value, e.g., equity equals total assets minus total liabilities. For the purpose of this Agreement, "total equity" is also the same as the sum of retained earnings and CIAC. "Construction work in progress" shall be defined as any fixed asset (utility property) construction programs not yet completed which would be classified as plant in service once the construction and inspection program is completed. The equity per meter equivalent for Bellevue will be higher than that of Redmond or Kirkland due to the high value of plant in service. "Plant in service" is defined as the District's utility property currently used in providing water utility service. All fixed assets, equipment, and capitalized leases are included in the definition of utility property.

2 1 2 The valuation of assets and liabilities shall be based on book value. If no book value exists, then the value shall be established by an estimate of the original cost or value of the respective asset or liability.

2 1 3 Ownership of plant in service shall be distributed as follows:

- a Distribution facilities including the associated land and easement rights shall be owned by the city in whose service area the facilities are located. Distribution facilities shall include water mains, hydrants, valves, meters, pressure-reducing stations, and other related facilities used for the transmission, storage, and District water system.

operation. Distribution facilities shall not include joint facilities as defined in Paragraph 2.1.3(b) below.

- b Joint facilities as described on Exhibit "C" attached hereto shall be jointly owned by the Cities in the undivided percentage interests as set forth on such exhibit.

2.1.4 Ownership of all other District assets and liabilities not included in Paragraph 2 1 3(a) and (b) above shall be divided between Redmond and Kirkland to achieve the required equity per meter equivalent as referenced above. Bellevue shall not receive ownership of any District assets and liabilities other than the distribution facilities within its service area and its percentage ownership interest of joint facilities as referenced in Paragraph 2 1 3(b) above. The distribution and assumption of such non-distribution assets and liabilities shall be as agreed to between the public works directors of Redmond and Kirkland. The following methods of distribution and assumption shall be applied to the extent that the required equity per meter equivalent can be achieved

- a. Long-term debt for distribution facilities shall be assumed by the City in whose service area the facility is located
Long-term debt for joint facilities shall be assumed by the Cities in the proportion of ownership interest of the joint facility as set forth on Exhibit "C."
- b Contributions in aid of construction and grants for distribution facilities shall be assumed by the city in whose service area the facility is located. Contributions in aid of construction and grants for joint facilities shall be assumed

by the cities in the proportion of ownership interest of the joint facility as set forth on Exhibit "C."

- c. Outstanding local improvement district assessments shall be allocated and distributed to the city in whose service area the real property subject to the assessment is located.
- d. Current accounts payable not paid from the Expense Fund provided for in Section 1.3 herein shall be paid from cash on hand prior to distribution of cash. Long-term accounts payable and liabilities shall be assumed by the city responsible for such long-term accounts payable and liabilities under this Agreement.
- e. Cash, cash equivalents (certificates of deposit, Treasury bills, and other similar investments) and receivables shall be allocated and distributed to the cities to achieve the equity per meter equivalent referenced in Section 2.1 above. The allocated cash, cash equivalents, and receivables are intended to provide funds determined necessary by the Cities to pay the accounts payable of the District not paid from the Expense Fund provided for in Section 1.3 herein and current liabilities (exclusive of construction costs funded by public works trust fund loan receivables referenced in paragraphs 4.1(c) and 4.1(f) herein) assumed by each city and then to provide funding

for the Cities capital improvement project accounts reserved for District capital improvement projects referenced in Section 4.1 herein.

- f. Unallocated equipment, inventory, and supplies shall be allocated as can be mutually agreed.
- g. Minor adjustments in the distribution and assumption of District assets and liabilities may be required due to changes at the District from normal operations occurring between the date of this Agreement and the assumption date. The cities agree to make such reasonable adjustments to fund balances and other asset distributions and liability assumptions as required.

2.2 District contracts outstanding on the assumption date not otherwise provided for under this Agreement shall be assumed by, assigned to, and performed by the respective city(s) as follows:

a. Developer Extension Agreements. Each city shall assume any developer extension agreements within the District service area allocated to that city as set forth in Section 8.1 herein.

b. Water Service Agreements. Each city shall assume any agreements by the District to provide water service within the District's service area allocated to that city as set forth in Section 8.1 herein. Notwithstanding the foregoing, Redmond shall assume the agreement dated January 14, 1992 to provide water to the proposed Willows Run Golf Course and the agreement dated February 11, 1992 to provide water to Metro's York Pump Station.

c. Construction Contracts Each city shall assume any construction contracts within the District's service area allocated to that city as set forth in Section 8 1 herein, except Kirkland shall assume, administer, and perform the contract with Morse Construction for the construction of the 14 3 million gallon reservoir located at Mark Twain Park, Kirkland, Washington

d District Equipment Leases and Service Agreements. Each city shall assume any District equipment, leases, and service agreements for the District equipment allocated to the respective city as provided in this Agreement.

e Miscellaneous District Contracts. All other District contracts not otherwise provided for in this Agreement, except any collective bargaining agreement to which the District is a party, shall be assumed by the respective city relating to the District's service area allocated to that city or, if the contract provides for matters of District-wide application, such contract shall be allocated and assumed by the Cities as agreed to by the Cities.

f Collective Bargaining Agreement Nothing in this Agreement shall be construed as obligating the Cities to assume or perform any collective bargaining agreement to which the District is a party, and the Cities expressly disclaim any intent to do so.

3 Execution of Documents

3 1 The Cities and the District agree to approve and execute any and all documents, including any bills of sale, deeds, assignments of interests and rights necessary to convey, transfer, or assign the District's assets, rights, and interests and liabilities to the Cities

4 District Capital Improvement Projects After Assumption.

4 1 To the extent funding is available, Kirkland agrees to include the District capital improvement (CIP) projects identified on Exhibit "D" attached hereto, and to construct and

install such District CIP projects within six years from the assumption date as part of Kirkland's CIP. To the extent funding is available, Redmond agrees to include the District capital improvement program projects identified on Exhibit "E" attached hereto, and to construct and install such District CIP projects within six years from the assumption date as part of Redmond's CIP. "To the extent funding is available" shall be defined as follows:

- a The total District cash and cash equivalent (such as certificates of deposit, Treasury bills, and other similar investments) as of the assumption date to be transferred to the respective city;
- b Total collectible customer accounts receivable allocated to the respective city under this Agreement;
- c Total Public Works Trust Funds receivable allocated to the respective city under this Agreement, and
- d Interest accruing on the CIP assumption accounts referenced in Paragraph 4 2 below,

LESS

- e An operating fund reserve of 12 3 percent of the increase in Kirkland's and Redmond's respective operating budgets due to the assumption;
- f Total current liabilities including (1) construction payables, and (2) the next annual principal and interest debt service payment for Public Works Trust Fund Loans allocated to the respective city under this Agreement and prorated as of the assumption date; and
- g Reserves for pending claims, suits, judgments, and other similar pending or potential liabilities against the District not otherwise covered by District

insurance; in the event any such claims, suits, judgments, or other similar pending or potential liabilities not covered by District insurance arise between the effective date of this Agreement and the date of assumption, the Cities and their respective risk managers and the president of the District Board of Commissioners shall agree upon reserve funding for such matter, following the resolution and termination of such matter, any balance remaining in such reserve funding shall be disbursed in accordance with the provisions of Section 2 herein to Kirkland and Redmond's respective assumption CIP account referenced in Section 4 herein

However, even if funding is available as defined above for District CIP projects for either City, the Cities shall not be required to expend such fund balances on District CIP projects if such expenditures would cause the City to increase its respective water utility rates due to any District capital improvement, debt or liability assumed by either City, until the available funding is first applied against such debt service and/or liability in order to offset any projected increase in rate revenue requirement

4 2 Upon the effective date of the assumption, available funding as defined herein, including earned and accumulated interest thereon, for District CIP projects shall be deposited into respective CIP assumption accounts for Kirkland and Redmond for use restricted to the CIP projects described herein. Such CIP assumption accounts shall be separately accounted for by restricted account established for such property. In the event the District CIP projects are completed before such available funding is fully utilized, the remaining funds shall be utilized for other City water utility projects within the former District service area assumed by the

respective City. Any party who was a District customer as of the assumption date as defined herein shall have the authority and standing to enforce the provisions of this section subsequent to the assumption date by legal action for such in King County Superior Court.

5. City of Seattle Contract.

5.1 The District shall assign its Water Purveyor Contract (Purveyor Contract) with the City of Seattle to Kirkland. Kirkland shall be the wholesale purveyor of water to Redmond and Bellevue, and shall operate the Seattle master meters as referenced in the Purveyor Contract. The ownership and obligation to operate, maintain, and pay the cost for the Seattle master meters shall be defined and allocated between the Cities pursuant to an Interlocal Operation and Maintenance Agreement referenced in Paragraph 6.1 below and attached hereto as Exhibit "F." Kirkland agrees to apportion its Purveyor Committee weighted votes between Kirkland and Redmond to the nearest whole vote relative to the water purchased by each city as allowed and provided by the Seattle Purveyor's Committee bylaws. Kirkland agrees to allocate the old water allowance which the District is currently receiving between the Cities as set forth on Exhibit "G" attached hereto. Kirkland agrees that any future allocations of water by Seattle at different rate blocks shall be allocated between Kirkland, Redmond, and Bellevue in proportion to the method utilized by Seattle.

6. Operation and Maintenance Agreement

6.1 The Cities agree to provide for the respective responsibilities and obligations of Kirkland, Redmond, and Bellevue to provide for the ongoing operation and maintenance of water supply facilities conveyed to the Cities by the District within common service areas by the adoption of an Interlocal Operation and Maintenance Agreement in substantially the form as attached hereto as Exhibit "F." The Cities shall approve such Interlocal Operation and

Maintenance Agreement contemporaneously with the approval of this Agreement subject to and conditioned upon the assumption of the District.

7. Personnel Employment and Compensation.

7 1 The Cities shall offer employment to all employees of the District who are designated on Exhibit "H" attached hereto who are engaged in the operation of District's facilities on the assumption date. Such employees shall be allocated between the Cities as indicated on Exhibit "H" attached hereto. The Cities shall offer employment to those employees allocated to them as of the assumption date, and the offers of employment shall comply with RCW 35 13A.090 and shall be in the form attached as Exhibit "I." After the execution of this Agreement by all parties, if the District needs to hire additional employees for staffing purposes, the District agrees to forebear its right to hire additional full-time employees for such purposes. However, the District may hire full-time replacement employees, temporary part-time at-will employees or independent contractors, but such temporary part-time employees or independent contractors shall not be considered full-time employees for the purposes of RCW 35 13A.090 and the Cities shall not be required to offer employment to such temporary employees or independent contractors following the effective date of the assumption. Further, in the event the District hires any full-time replacement employees after the effective date of this Agreement, the District shall not pay or provide compensation or benefits to such replacement employee more than the compensation or benefits paid to the replaced employee. The City to whom the replaced full-time employee was allocated shall offer employment to the replacement employee on the same terms as the replaced employee, except that compensation and benefits shall not exceed the rate of compensation or benefits paid to such replacement employee by the District. The Cities also agree to make City employees available to assist the District for temporary

staffing purposes on terms and conditions agreed to between the respective city and the District. The City of Kirkland shall offer employment to the District Manager on the terms and conditions set forth in the proposed Employment Agreement and the proposed Professional Services Agreement attached hereto as Exhibit "J."

8. Allocation of the District's Area and Customers.

8 1 Upon the date of assumption, the District's service area shall be allocated between the Cities as indicated on Exhibit "K" attached hereto. The Cities shall be obligated to provide water service to the real property and to the customers previously served by the District, subject to the provisions of Section 9 herein

9. City Utility Rates, Charges, and Regulations.

9 1 Each City agrees that it shall provide water service within the District's service area allocated to that city, whether inside or outside the city, on the same basis as water service is provided to other City customers in accordance with the Cities' respective ordinances, resolutions, regulations, and codes relating to the provision of water as adopted and enforced by the respective city. The city shall charge service charges, capital charges, meter fees, assessments, and any other charge or fee related to the service to the respective service area assumed pursuant to this Agreement, whether located within the city or outside the city, at no higher rate than the rate charged for the same "class of service" rendered within other portions of the city. The term "class of service" shall have the meaning as set forth in RCW 35.92.010, or as such statute may be amended. Specifically, Redmond agrees that it will not charge District customers or parties not yet receiving District water service within the District's boundaries, whether inside or outside Redmond's corporate boundaries, Redmond's utility surcharge for outside City customers (presently 25%) for water service. The Cities shall be entitled to charge

parties applying to connect to their water systems, all applicable city general and local facility charges if the parties applying for connection have not previously paid such charges to the District. The Cities shall be entitled to assess parties applying to connect to a city water system, all other administrative fees and charges such as meter and inspection charges.

10. District Commissioners Indemnification

10.1 On and after the assumption date, the Cities shall assume all duties, obligations and liabilities of the District and its Commissioners. The Cities shall indemnify, defend and hold the District and the Commissioners harmless from any claim or liability arising directly or indirectly from the District's or Commissioner's alleged performance or failure to perform District duties, including all reasonable attorney's fees and costs incurred therein, provided, that the Cities' duty to indemnify, defend and hold the Commissioners and the District harmless shall only apply to claims or liabilities arising out of the District's and/or the Commissioners' performance or failure of performance of duties in good faith.

10.2 If any third party files any administrative or legal action or proceeding after the effective date of this Agreement contending that any City or Cities must assume any collective bargaining agreement to which the District is a party, the Cities shall indemnify, defend, and hold the Commissioners and District harmless from any claim or liability arising out of such action or proceeding relating to any such collective bargaining agreement, provided, however, the District, and its Commissioners and officers shall cooperate with Cities in the defense of any such action or proceeding by, but not limited to, availability for testimony in the preparation for, discovery relating to, and the defense of any such action or proceeding.

11 Liability for Damage, Indemnity, and Hold Harmless.

11.1 Each City agrees to indemnify, defend and hold harmless the District and its officers, employees, agents and consultants, from any and all claims, actions, liabilities, losses, costs, or expenses, including costs of any lawsuit and attorneys' fees, relating to any asset or liability assumed pursuant to this Agreement, arising out of any negligent or wrongful act or omission of the City resulting from or in any way connected with the responsibilities or obligations the City may have pursuant to this Agreement.

11.2 Each City agrees to defend, indemnify, and hold the other Cities harmless from any and all losses, claims, demands, payments, suits, liabilities, or judgments of every nature and description brought or recovered against the other Cities for damages suffered by person or property relating to or arising out of this Agreement, except to the extent such damage resulted from the negligence of the other Cities

11.3 On and after the assumption date, each City shall be solely liable for all damages or claims made in connection with or arising out of the operation, maintenance, construction, repair or replacement of any asset or liability assumed by that City pursuant to this Agreement, irrespective of the date on which the damage or claim accrued or arose. Claims, suits, judgments, and other similar liabilities against the District shall be paid from District assets, insurance and/or reserves as provided in Section 4.1 herein

12 Representation and Warranty, Insurance.

12.1 To the best of the District's knowledge, there are no outstanding or possible claims against the District which could involve or presently involve the District in litigation except as set forth in Exhibit "L" attached to this Agreement

12.2 The District agrees to maintain all insurance it maintains as of the effective date of this Agreement, including auto, casualty, liability, errors and omissions, and public employee and elected officials bonding, in full force and effect from the effective date of this Agreement until the date of assumption. Thereafter, the District agrees to cooperate with the cities and complete, approve, and execute any applications or other documents required to obtain, extend, and/or renew District insurance coverage as required by the cities and to add the Cities as insureds on any such insurance coverage or policies, including but not limited to the purchase of a "tail" for the public officials errors and omissions coverage with the premium being paid out of District assets

13 Records Made Available

13 1 The District shall make available and transfer to the Cities all public documents and records which the District has in its possession or control

14 Method for Sharing Costs of Assumption

14 1 All costs incurred in the review and analysis of issues relating to the assumption of the District by the Cities, and in completing the assumption and dissolution process, including the preparation of this Agreement and all exhibits thereto, shall be divided proportionately between the Cities as follows Kirkland - 50%, Redmond - 50%. The Cities hereby designate Kirkland as the lead agency to direct the Cities' consultants in the completion of the assumption and dissolution process Subsequent to the execution of this Agreement by all the parties, Kirkland shall, upon receipt of all billings under its contract with the consultants, forward to Redmond a statement showing the total amount due, the amount owed by each of the Cities and the payment due date The billing shall also include all costs such as BRB filing costs reasonably incurred by Kirkland in pursuing the assumption of the District by the Cities Upon

receipt of any statement from Kirkland, Redmond shall remit payment to Kirkland as promptly as practicable

14.2 Should either Kirkland or Redmond dispute any statements or payment submitted, the City disputing the statement shall notify the other of the nature of the dispute in writing no later than thirty (30) days after receipt of the statement. Failure of either City to assert a claim or dispute regarding a statement within the thirty day limit shall constitute a waiver of any such claim or dispute. Within ten (10) days of receipt of notice of a dispute, the Kirkland and Redmond public works directors or their representatives shall meet to resolve all such billing disputes. During the pendency of any dispute between the Cities and any consultant, Kirkland shall have the authority to make or withhold payment to the consultants as Kirkland and Redmond deem appropriate, and such payment shall not constitute a waiver of any right, claim or interest which the Cities may assert in the pending dispute.

14.3 Each City agrees to solely bear its respective cost of legal and staff services incurred in connection with this Agreement and any assumption of the District by the Cities, except those legal fees and costs incurred by the legal consultant employed by the Cities, which shall be divided proportionately between the Cities as provided in this section.

14.4 The District shall solely bear all costs incurred by the District on its own behalf relating to the assumption and dissolution process referenced in this Agreement.

15 Integration

15.1 This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and may be modified only by an agreement in writing signed by all parties hereto.

16. Superseding Agreement.

16.1 This Agreement supersedes the Assumption Study Agreement executed by the Cities, attached as Exhibit "A" which shall have no further force or effect.

17. Notice

17.1 Any notice to be given or any documents to be delivered by any party to any other shall be delivered in person or mailed by certified mail and addressed to the respective parties at the following addresses:

To Kirkland at: Public Works Director
123 Fifth Avenue
Kirkland, WA 98033

To Redmond at: Public Works Director
15670 N E. 85th Street
Redmond, WA 98052

To Bellevue at: Utilities Manager
City of Bellevue
11511 Main Street
Bellevue, WA 98009-9012

To District at: Board of Commissioners
Rose Hill Water District
P O Box 539
Kirkland, WA 98083-0539

18. Invalid Provisions.

18.1 If any paragraph or provision of this Agreement is held to be invalid, the remainder of the Agreement shall not be affected and shall remain in full force and effect.

19. Effective Date

19.1 This Agreement shall take effect upon ratification by the City Councils of the respective Cities and by the Board of Commissioners of the District as set forth below

20. Counterparts.

20 1 This Agreement may be signed in counterparts and, if so signed, shall be deemed one integrated document

CITY OF KIRKLAND ("Kirkland")

By _____
Its _____
Dated _____

Approved as to form.

OFFICE OF THE KIRKLAND CITY ATTORNEY

By _____
Dated _____

CITY OF REDMOND ("Redmond")

By _____
Its _____
Dated _____

Approved as to form

OFFICE OF THE REDMOND CITY ATTORNEY

By _____
Dated _____

CITY OF BELLEVUE ("Bellevue")

By _____
Its _____
Dated _____

Approved as to form.

OFFICE OF THE BELLEVUE CITY ATTORNEY

By _____
Dated _____

ROSE HILL WATER DISTRICT ("District")

By _____
Its _____
Dated _____

Approved as to form

OFFICE OF THE DISTRICT ATTORNEY

By _____
Dated _____

EXHIBIT "B"

INTERLOCAL OPERATION AND MAINTENANCE AGREEMENT

This Agreement is made by and between the Cities of Kirkland ("Kirkland"), Redmond, ("Redmond"), and Bellevue, ("Bellevue"), municipal corporations in King County, Washington, collectively referred to as the "Cities" for the purposes set forth herein.

RECITALS

A. The Cities are, contemporaneously with their approval of this Interlocal Operation and Maintenance Agreement, approving an Assumption Agreement whereby the Cities are assuming the assets, liabilities and operations of the Rose Hill Water District, a municipal corporation in King County, Washington ("District").

B. Prior to the assumption of the District by the Cities, Kirkland and Bellevue maintained jointly owned water facilities with the District pursuant to various interlocal agreements providing for such. In addition, Redmond entered into certain interlocal agreements with the District regarding water system operation and water supply. Upon the effective date of the assumption of the District by the Cities, the Cities will assume ownership and responsibility for the District's water supply facilities within the Cities' respective service areas. However, certain District facilities will continue to be jointly owned and operated by the Cities in accordance with the terms of the Assumption Agreement and their respective undivided ownership interests in such facilities.

C. The purpose of this Agreement is to provide for the respective responsibilities and obligations of the Cities to provide for the ongoing operation and maintenance of water supply facilities ("joint facilities") within the common service areas as further described in this Agreement.

D. The Cities are authorized by Chapter 39.34 RCW, the Interlocal Cooperation Act, to enter into interlocal agreements for the joint action referenced herein.

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

1. Service Areas. Each City shall be the direct provider of water service within its service area. For purposes of this Agreement, "service area" means that portion of the District that overlays a portion of each City's incorporated area together with adjacent

unincorporated areas as more generally described further in this section. The service area for Bellevue shall be that area existing within the Bellevue city limits as of the effective date of this Agreement. The service area for Kirkland shall be that area existing within the Kirkland city limits as of the effective date of this Agreement and any District areas in unincorporated King County lying west of 132nd Avenue NE and north of NE 124th Street. The service area for Redmond shall be that area existing within the Redmond city limits as of the effective date of this Agreement and any District areas in unincorporated King County lying east of 132nd Avenue NE. If any unincorporated area is subsequently annexed into a City, the annexed area shall remain in or be transferred to the service area of the annexing City.

2. Meter Areas. Within each City there are hereby established "direct read meter areas" and "master meter areas."

a. Direct read meter areas are those between the Seattle meters as installed within the District water system as of the effective date of this Agreement and the points at which master meters for the Cities exist or are installed in the future.

b. Master meter areas are those areas downstream from existing City master meters outside of existing District service areas or master meters inside of the District service areas installed in the future.

c. City master meters are those existing or future meters that meter water to master meter areas.

3. Water Supply.

a. Kirkland shall purchase water from The City of Seattle ("Seattle") or any other regional water supply authority at Kirkland's sole discretion for supply to the service areas of all three Cities and shall sell water to Redmond and Bellevue. In the event any portion of Bellevue's direct service area lies within a Redmond master meter area, then Redmond shall sell water to Bellevue to serve such area.

b. In the event Kirkland terminates its water purveyor contract with Seattle, as identified in Section 9 herein, and in section 5 of the Assumption Agreement, Kirkland assumes no responsibility for water supply to the other Cities beyond the effective date of said termination; provided, however, that such contract termination must be made in accordance with the terms and conditions of Kirkland's purveyor contract with Seattle.

4. Water Usage. The water usage within the direct read meter areas shall be referred to as "retail water" and the water usage through master meters shall be referred to as "wholesale water." The water loss within the direct read meter areas to uses including but not limiting to flushing, construction, leakage and firefighting shall be referred to as "unaccounted water." The usage of each City shall be computed for retail water, wholesale water and unaccounted water separately. Unaccounted water usage shall be determined by subtracting the wholesale water usage and retail water usage for each of the three Cities from the quantity of water purchased from The City of Seattle. The unaccounted water shall then be allocated to each of the Cities in proportion to the amount of retail water used within each City's service area.

5. Operation and Maintenance. Kirkland and Redmond shall be responsible for performing the operation and maintenance of any facilities jointly owned by the Cities, such joint facilities being described in Exhibit C of the Assumption Agreement and incorporated herein by this reference. Redmond shall operate, maintain and repair any jointly owned water lines within the Redmond service area. Kirkland shall operate, maintain and repair all other joint facilities as described in such Exhibit C.

6. Establishment of a Joint Board. The Cities hereby establish a Joint Board which shall be responsible for the planning and performance of operations, maintenance, extraordinary maintenance, repair and replacement of the joint facilities. The Joint Board shall meet at least annually and shall be comprised of the Public Works Director (or equivalent department head) of each City or his/her designee.

A quorum at any meeting of the Joint Board shall consist of a simple majority of the Joint Board's membership. All Joint Board members shall have one equal vote and, except as provided otherwise herein, all actions required to be authorized by vote of the Joint Board shall require approval of a majority of those present; provided however, that if the proposed action directly pertains to the operations, maintenance, extraordinary maintenance, repair or replacement of a particular jointly-owned facility, then the Joint Board action shall be by weighted majority vote based on the percentage of ownership interest of each City in the particular jointly owned facility to be maintained and operated, repaired or replaced.

7. Water Supply, Operation and Maintenance Costs. Costs for water supply and water system operation, maintenance, extraordinary maintenance, repair and replacement as further defined herein, shall be shared by

the Cities and shall consist of the following components:

a. Water Charges: The water rates for wholesale water, retail water and unaccounted water shall be the commodity rates charged by the City of Seattle for the type of water (old, new) and for the period consumed (summer, winter). This rate shall also include but not be limited to emergency surcharges and applicable commodity or other charges or surcharges established by the City of Seattle.

b. Meter Charges: The meter charges for the City of Seattle meters shall initially be allocated to each City as follows:

Kirkland:	65%
Redmond:	35%
Bellevue:	0%

The percentage allocation of meter charges to the Cities shall be reviewed annually by the Joint Board on or about January 1 and shall be adjusted, if deemed necessary by the Joint Board, based upon the total quantity of water usage by each City in proportion to the total quantity of water purchased through the Seattle meters for the previous year.

There shall be no charges for any City-operated master meter. Costs associated with the operation and maintenance of master meters shall be borne by the City served by the master meter. City operated master meters will be tested and calibrated in even numbered years by the City served by the master meter.

c. Operation Charges. Kirkland shall assess Redmond and Bellevue based on water usage for their proportionate shares of labor and costs incurred in the daily operation of the joint facilities with respect to the Cities' ownership interests in the joint facilities. Operation of the joint facilities shall include but not be limited to the operation of the instrumentation/control systems for such joint facilities, and for controlling the rate of flow from the Seattle supply facilities. The operation charges shall initially be as follows (and shall be subject to periodic review by the Joint Board at least every two (2) years and equitable adjustment based on actual labor costs and expenses incurred by Kirkland):
Redmond - \$ _____ and Bellevue - \$ _____.

d. Maintenance Charges: Kirkland shall assess Redmond and Bellevue, and Redmond shall assess Kirkland and Bellevue, based on their respective ownership interests in the joint facilities, for providing

routine maintenance of and repairs to the joint facilities for which Kirkland or Redmond is responsible based upon service area location. These maintenance and repair activities include but are not limited to maintenance and repair of the instrumentation/control system for the joint facilities, maintenance and repair of the reservoirs, jointly owned pipelines, pumping facilities, reservoir control facilities, landscape maintenance and groundskeeping for the various joint facilities, and other activities of a similar nature. Redmond and Bellevue shall make similar assessments for routine maintenance of joint pipeline facilities within their respective service areas. The Cities' ownership interests in the joint facilities are identified in Exhibit C of the Assumption Agreement and incorporated herein by reference.

The maintenance charges shall initially be as follows (and shall be subject to periodic review by the Joint Board at least every two (2) years and equitable adjustment based on actual labor costs and expenses incurred by Kirkland): Redmond - \$ _____ and Bellevue - \$ _____.

e. Administration Charges: Kirkland shall assess Redmond and Bellevue based on water usage for their proportionate shares of the administrative costs incurred by Kirkland to provide administrative activities and duties for this Agreement and operation and maintenance of the joint facilities for which Kirkland is responsible. These administrative activities include but are not limited to coordination with the City of Seattle, financial and accounting services, record keeping, and billing.

The administrative charges shall initially be as follows (and shall be subject to periodic review by the Joint Board at least every two (2) years and equitable adjustment based on actual labor costs and expenses incurred by Kirkland): Redmond - \$ _____ and Bellevue - \$ _____.

f. Insurance: The Joint Board shall determine the nature and amount of hazard and liability insurance to be provided for the joint facilities and their operation. Each City may but shall not be required to maintain casualty insurance for all risks of direct physical loss from external cause on the jointly-owned facilities to the extent of their interest at the current replacement cost of such improvements, which costs shall be updated annually. The Cities may agree that one of the Cities may obtain such insurance naming the other Cities as named insureds and for the sharing of the costs of such insurance.

g. Special Assessments.

1. Special Assessments for Emergency Items. Special assessments shall be made for emergency maintenance, repair and replacement activities of the joint facilities. Emergency maintenance, repair or replacement activities shall be defined as maintenance, repair or replacement of joint use facilities requiring immediate attention and, without such attention, could cause a disruption to water supply or quality. The Joint Board shall have the authority to approve and assess such special assessments based on actual costs of such emergency maintenance, repair or replacement activities as demonstrated by an accounting of time and materials; provided, however, any such special assessment approved by the Joint Board, to the extent it exceeds \$50,000.00 for any City, shall not obligate such City until and unless approved by that City, unless that City delegates by appropriate legislative action the authority to its representative on the Joint Board to approve a larger special assessment on its behalf. This amount may be adjusted every five (5) years by the Joint Board by an amount not to exceed increased costs due to inflation. In calculating such adjustments, the Joint Board may rely on consumer price indices for the Seattle-Metropolitan area and similar locally available indices. Time and materials shall include labor, benefits, overhead, materials, taxes and contract amounts. Overhead shall be 100% of direct labor and benefit costs. Each City shall be assessed such special assessment based on its respective ownership interest in the joint facility under emergency maintenance or repair.

2. Special Assessments for Extraordinary Items. Special assessments may also be made for extraordinary maintenance, repair and replacement activities of the joint facilities. Extraordinary maintenance, repair and replacement activities may include but are not limited to coating, replacement, and structural repairs of the water storage facilities, and replacement of joint facilities (pipelines, pumps, motors, valves, vaults, supply meters and structures).

3. In the event any of the joint facilities are destroyed or irreparably damaged by any cause, the facility so destroyed or damaged shall be promptly replaced by the Cities and the cost thereof shall be paid in the same proportion as

the ownership of the facility destroyed or irreparably damaged; Provided, however, the Cities may, by unanimous agreement, determine that such facilities need not be replaced or reconstructed if the Joint Board finds the facilities are no longer necessary to the efficient provision of water supply.

h. Charge Adjustment Process. The operations, maintenance and administrative charges set forth above shall be subject to periodic review and equitable adjustment by the Joint Board based on actual labor costs and expenses incurred by Kirkland. A cost of service study shall be prepared at least every five (5) years or sooner if requested by any City to review such charges. The cost of service study shall be prepared by an independent consultant if requested by any City. The Joint Board shall have the authority to revise operations, maintenance and administrative charges based on the cost of service study.

8. Water Supply, Operation and Maintenance Payments.

a. Meter Reading. The Cities shall read their master meters and direct read meters as follows:

1. Redmond: Kirkland shall read Redmond's master meters at least monthly. Redmond shall read its direct read meters monthly or bimonthly in accordance with Redmond's policies and procedures. Redmond shall report to Kirkland the retail usage and the meter read dates within thirty (30) days of meter reading.

2. Bellevue: Kirkland shall read Bellevue's master meters at least monthly. Bellevue shall read its direct read meters monthly or bimonthly in accordance with Bellevue policies and procedures. Bellevue shall report to Kirkland the retail usage and meter read dates within thirty (30) days of meter reading. If Bellevue is within a Redmond master meter area, then Redmond shall read the master meter and Bellevue shall report to Redmond the retail usage and meter read dates within thirty (30) days of meter reading.

3. Kirkland: Kirkland shall read its master meters at least monthly and shall read its direct read meters monthly or bimonthly in accordance with Kirkland policies and procedures.

b. Supply and Consumption Reports. Kirkland shall prepare a supply and consumption report for each quarter of the year within ninety (90) days of the end

of each such quarter. The report shall indicate the total purchased supply, the wholesale usage and retail water usage reported by each City, and the unaccounted water usage calculated for each City. This report shall correlate the total purchased supply and reported usages to actual calendar periods of use as may be determined based on the varying meter read dates and frequency of meter readings. This report shall indicate the type of water used (old, new) and the period of use (summer, winter).

c. Billings and Payments. Kirkland shall invoice Redmond and Bellevue monthly for estimated water usage. Estimated water usage shall be established from prior years' actual consumption records. With each quarterly supply and consumption report an invoice shall be prepared based on actual usage. Redmond and Bellevue shall pay their respective invoices within thirty (30) days of receipt.

9. Seattle Water Purveyor Contract. The parties acknowledge that the District has assigned its water purveyor contract with the City of Seattle to Kirkland pursuant to the Assumption Agreement and that Kirkland is a purveyor of water to Redmond and Bellevue. As set forth in the Assumption Agreement, Kirkland agrees to apportion its purveyor committee weighted votes between Kirkland and Redmond as allowed and provided by the Seattle Purveyors Committee By-laws. Kirkland further agrees to allocate between the Cities the flushing allowance provided for in the water purveyor contract.

The water purveyor contract also provides in section III F therein for a purveyor facilities account. That section provides for identification and compensation for certain facilities that have been allocated to and paid for by the purveyors. Any allocation or credit to Kirkland under the purveyor contract in the event of the application of Section III F shall be reallocated by Kirkland to the three Cities based upon water purchased by each City in those years the allocation is made.

10. Status of Parties. This Agreement shall not be construed to establish a partnership, joint venture or any other legal relationship between the parties hereto except as common owners of the jointly owned facilities.

11. Successors. This agreement and its terms and conditions shall be binding upon the successors and assigns of the parties hereto.

12. Change in Proportion of Use or Ownership. The Cities may agree to adjust the use and/or ownership of the joint facilities identified in this Agreement and exhibits

hereto as either a permanent amendment to this Agreement or as a temporary arrangement, and may agree that one party will pay the other party on an agreed basis for such permanent or temporary use of all or part of the other parties' contract share of the joint facilities.

13. Term and Termination. The term of this Agreement shall commence contemporaneously with the effective date of the Assumption Agreement, as identified in Section 1.4 of said Agreement. This Agreement shall remain in effect until terminated by mutual agreement of the three (3) Cities. Upon termination of this Agreement, the disposition of the jointly owned facilities shall be in accordance with the ownership interests identified in Exhibit C of the Assumption Agreement; and all other property acquired during the life of this Agreement shall be distributed to the contributing City or Cities to the extent of such City's or Cities' contribution(s).

14. Emergencies, Notice and Response. In the event of an emergency condition occurring in the water system within the service areas of any of the Cities which affects the operation of the joint facilities, the City experiencing the emergency condition shall, upon learning of the condition, endeavor to immediately notify the other Cities. The Joint Board shall establish procedures for such notification providing as a minimum, a priority of names and telephone numbers for notification. The parties so notified shall, if requested and to the extent practicable, render emergency assistance to the other party and modify their system operations and control to the extent practicable as reasonably necessary to meet the emergency. In the event of such emergency, the party experiencing the emergency shall reimburse the other parties for the reasonable cost of any assistance provided.

15. Records. Kirkland shall maintain records indicating all operation and maintenance and administrative costs and charges. Kirkland shall also maintain records indicating maintenance schedules for the joint facilities for which Kirkland is responsible and identifying actual maintenance performed.

16. Indemnification. Each City agrees to defend, indemnify, and hold the other Cities harmless from any and all losses, claims, demands, payments, suits, liabilities, or judgments of every nature and description brought or recovered against the other Cities for damages suffered, or alleged to be suffered by persons or property caused by or resulting from the operation or maintenance of the joint facility as described herein, except to the extent such damages resulted from the negligence of the other Cities.

17. Notice and Communications All notices and other

formal communications to be given or any documents to be delivered by any party to any other party shall be delivered in person or mailed by certified mail and addressed to the respective parties at the following addresses:

To Kirkland at: Director of Public Works
City of Kirkland
123 Fifth Avenue
Kirkland, Washington 98033

To Redmond at: Director of Public Works
City of Redmond
15670 NE 85th Street
Redmond, Washington 98052

To Bellevue at: Utility Director
City of Bellevue
PO Box 90012
Bellevue, WA 98009-9012

18. Modification of Agreement. This Agreement may be amended, modified or added to only by written instrument properly signed by all parties hereto.

19. Superseding Agreement. This Agreement supersedes the following agreements previously executed by the Cities and the respective parties referenced therein which shall have no further force and effect:

20. Severability. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Agreement shall not affect the validity of the remainder of the Agreement.

21. Counterparts. This Agreement may be signed in counterparts and, if so signed, shall be deemed one integrated document.

22. Filing and Effective Date. This Agreement shall be filed with the King County Department of Records and Elections and the Secretary of State of the State of Washington and shall take effect contemporaneously with the effective date of the Assumption Agreement.

CITY OF KIRKLAND

Approved as to Form:
OFFICE OF THE KIRKLAND
CITY ATTORNEY

By _____
Its _____
Dated _____

By _____
Its _____
Dated _____

CITY OF REDMOND

Approved as to Form:
OFFICE OF THE REDMOND
CITY ATTORNEY

By _____
Its _____
Dated _____

By _____
Its _____
Dated _____

CITY OF BELLEVUE

Approved as to Form:
OFFICE OF THE BELLEVUE
CITY ATTORNEY

By _____
Its _____
Dated _____

By _____
Its _____
Dated _____

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7/12/93