1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

KING COUNTY

Signature Report

May 24, 2004

Ordinance 14913

Proposed No. 2004-0158.2 **Sponsors** Edmonds and McKenna

AN ORDINANCE authorizing the executive to enter into an agreement amending King County's sewage disposal agreement with the city of Renton and authorizing the executive to enter into amendments to the sewage disposal agreements with all remaining participant agencies.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The executive or the executive's designee is hereby authorized to enter into an agreement with the city of Renton, substantially in the form of Attachment A to this ordinance, that amends the agreement for sewage disposal referenced therein, extends its term, and also addresses odor and chemical use at King County's south wastewater treatment plant.

SECTION 2. The executive is authorized to execute amendments to King County's agreements for sewage disposal with the following cities, special districts and other entities to incorporate into those agreements the Amendment of the Basic

Agreement contained in Section 1 of the agreement with the city of Renton attached to this ordinance as Attachment A to this ordinance:

A. Cities of Bellevue, Bothell, Issaquah, Kirkland, Redmond and Tukwila;

B. Town of Woodway;

C. Lakehaven, Olympic View and Sammamish Plateau water and sewer districts; and

D. Ronald Wastewater Management District.

SECTION 3. The executive is authorized to execute amendments to King County's agreements for sewage disposal with the following cities, special districts and other entities to incorporate into those agreements the Amendments of the Basic Agreement contained in Sections 1 and 2 of the agreement with the city of Renton attached to this ordinance as Attachment A to this ordinance:

A. Cities of Algona, Auburn, Brier, Black Diamond, Kent, Lake Forest Park and Mercer Island;

B. Pacific and the city of Seattle;

C. Alderwood, Bryn Mawr-Lakeridge, Cedar River, Cross Valley, Northeast Sammamish, Soos Creek and Woodinville water and sewer districts;

D. King County Water District No. 90;

E. Highlands, Val Vue and Vashon sewer districts;

F. Coal Creek and Northshore utility districts; and

G. Lake Sammamish State Park and Shorewood Apartments.

SECTION 4. The executive is authorized to execute extensions of King County's agreements for sewage disposal with all cities, special districts and other entities identified in sections 2 and 3 of this ordinance, except King County Water District No.

90, Lake Sammamish State Park and Shorewood Apartments, so that those agreements continue in full force and effect until July 1, 2056.

Ordinance 14913 was introduced on 3/29/2004 and passed by the Metropolitan King County Council on 5/24/2004, by the following vote:

Yes: 11 - Mr. Phillips, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr. Pelz, Mr. McKenna, Mr. Ferguson, Mr. Hammond, Mr. Gossett, Ms. Hague and Mr. Irons
No: 0
Excused: 2 - Ms. Patterson and Mr. Constantine

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Phillips, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this 3 day of June, 2004.

Ron Sims, County Executive

RECEIVED
2004 JUN -4 PM 3:50
CLERK
KING COUNTY COUNCIL

Attachments A. City of Renton King County Amendment to Agreement for Sewage Disposal Agreement Regarding Odor and Chemical Use at South Plant, B. Amending the Sewage Disposal Agreement between King County and Local Sewer Service Agencies, C. Memorandum from Jim Hattori

CITY OF RENTON

KING COUNTY

AMENDMENT TO AGREEMENT FOR SEWAGE DISPOSAL

AGREEMENT REGARDING ODOR AND CHEMICAL USE AT SOUTH PLANT

THIS AGREEMENT made as of the _____day of _____, 2003 between the City of Renton, a municipal corporation of the State of Washington (hereinafter referred to as "the City") and King County, a political subdivision of the State of Washington (hereinafter referred to as "the County");

WITNESSETH:

WHEREAS, the city and the county have entered into a long-term agreement for sewage disposal dated May 2, 1961 as amended (hereinafter refereed to as the "Basic Agreement") and the county has proposed certain changes to, and extension of, the Basic Agreement; and

WHEREAS, the city concurs that said proposed changes and extension are in the best interest of the parties and the citizens of the Metropolitan Area; and

WHEREAS, the county operates a wastewater treatment plant in the city (hereinafter referred to as "South Plant") and desires to operate said plant in a manner that minimizes any negative impacts of said operation on the citizens and businesses of the city and the surrounding area; and

WHEREAS, the city and the county desire that odors from plant operations be prevented and controlled and that risks associated with the use of certain chemicals at the plant be obviated; and

WHEREAS, by Ordinance No.14712, adopted July 14, 2003, the King County Council has established specific policies related to the control of odor at county wastewater facilities; and

WHEREAS, the county has discontinued its use of chlorine for disinfection of wastewater at South Plant and is currently using sodium hypochlorite applied through temporary feed systems and plans to construct a permanent feed system for said use;

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Section 1. Amendment of Basic Agreement. Section 5. of the Basic Agreement is hereby amended by adding the following new subsection 3.d)

"d) An additional charge may be made to recover unforeseen costs to operate and maintain the metropolitan sewerage system or meet debt requirements if the county executive declares and the council by a majority vote finds that the system cannot be adequately maintained, and debt policies met, without such additional charge. The additional charge shall then be effective no earlier than the first day of the second month following the emergency declaration described in this subparagraph 3.d) and shall be billed and collected in the same manner as the monthly rate referenced in subparagraph 3.c). The additional charge described in this paragraph 3.d) may be incorporated into the next rate setting cycle but will otherwise terminate within twelve months of the date approved. The additional charge described in this subparagraph 3.d) shall not be made until and unless it conforms to the sewage disposal agreements with all remaining participants."

Section 2. Amendment of the Basic Agreement—New Section. A new Section 18 is added to the Basic Agreement as follows:

"Section 18. Future Amendments. The city agrees to amend and hereby concurs in any amendment to this agreement which incorporates any changes in the terms for sewage disposal

and payment therefore as may be proposed by the county and agreed to by those participants that shall represent, in total, not less than 90 percent of the residential customers and residential customer equivalents then served by the Metropolitan Sewerage System."

Section 3. Extension of Basic Agreement. The Agreement for Sewage Disposal between the City of Renton and King County dated May 2, 1961, as amended, is hereby extended for a period of twenty years and shall continue in full force and effect until July 1, 2056. The agreement dated May 2, 1961, as subsequently amended and extended shall constitute the entire agreement for Sewage Disposal between the parties.

Section 4. Conversion to Sodium Hypochlorite. The county will complete its modifications to the chemical building at South Plant to create permanent primary and secondary feed systems for use of sodium hypochlorite for the disinfection of wastewater. The county will make every reasonable effort to complete said modifications by March 31, 2007 and will continue using non-chlorine disinfectants applied through temporary feed systems until that time.

Section 5. Implementation of Odor Control Improvements. The county will construct or otherwise implement all Phase 1 odor prevention improvements identified for South Plant in *the Odor Prevention Policy Recommendations* dated March 18, 2003 and by this reference made part of this agreement. The county will make every reasonable effort to implement said improvements, specifically identified as "imperative" on Table A.1 of said *Odor Prevention Policy Recommendations*, no later than December 31, 2006. The covering of the aeration basins, one of the improvements identified as "imperative" on Table A.1, will be accomplished as far in advance of that date as is practicable.

The county will evaluate the effectiveness of Phase I improvements following their implementation. If the odor prevention goals described in Ordinance No. 14712 have not been

achieved the county will implement Phase II improvements as soon as is practicable and in no event later than 2008. The attached schedule for improvements within Phase I and Phase II, Table A.2 of *the Odor Prevention Policy Recommendations,* is attached to this agreement to indicate priority projects and estimated timing for each project. The county may, at its option, substitute equally effective measures in the event such measures are identified during preliminary design of the measures identified on said Table A.1. If Phase II improvements are required to be installed, their effectiveness shall be evaluated in 2009. If Phase II improvements fail to meet the goals of the policies the County will implement Phase III level improvements in coordination with the City. During implementation of all phases of odor control work, the County shall employ "best in country for existing facilities" standards as defined in *the Odor Prevention Policy Recommendations.* As new technology becomes available to the County in implementing the odor control measures, an evaluation shall be made to determine its suitability for South Plant.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first written above.

City of Renton	King County
By_____	By_____
Title_____	Title_____
Attest:	Attest:
_____	_____

AMENDING THE SEWAGE DISPOSAL AGREEMENT BETWEEN KING COUNTY AND LOCAL SEWER SERVICE AGENCIES

Introduction

King County owns, operates, maintains and continues to develop a metropolitan sewage treatment and disposal system originally developed and operated by the Municipality of Metropolitan Seattle (Metro). The basic legal authority under which the system was developed and continues to be operated is Chapter 35.58 RCW, which enables and describes the powers of metropolitan municipal corporations. When Metro and King County merged in 1994, the powers that were exercised by the Metro Council were vested in the King County Council, having the effect of making King County a metropolitan municipal corporation in addition to a county.

Chapter 35.58 confers broad powers for the purpose of developing and operating the "metropolitan system" including the power to require that cities and special districts in the "metropolitan area" deliver their sewage to metropolitan facilities when they can drain to "metropolitan facilities" by gravity flow. It also includes some general authority to "fix rates and charges" for the use of metropolitan facilities but does not provide specific mechanisms for the collection and payment of these charges.

King County's Wastewater Treatment Division, as successor to Metro's Water Pollution Control Department, provides sewage disposal service to 34 local governments (including the City of Seattle), one state park and one privately owned apartment complex. These "local sewer agencies" provide sewer service in most of western King County and a substantial portion of south Snohomish County. Treatment and disposal of sewage collected by these local agencies is accomplished by the County pursuant to long-term agreements entered into in accordance with the broad powers of Chapter 35.58. Most of these agreements were entered into between the individual local governments ("participants') and Metro in the 1960s and 70s. The agreement with the City of Seattle was one of the earliest, entered into in 1961. The initial termination date of the agreements was 2016 but most were extended to 2036 in the late 1980s. They were also amended in 1992.

The agreements obligate the County to treat the sewage delivered to the County system and establish the basis of payment by the local agencies for this service. The basis of payment is uniform in all agreements, although the agreement with Seattle provides for an additional charge to help offset the costs of the County's program for combined sewer overflow (CSO) control.

The agreements also provide a general distinction between the "metropolitan sewage system" and "local sewage facilities" as well as address other aspects of the relationship between the County and its "participants" as it pertains to sewage disposal service.

Agreement changes needed

Several circumstances now require that the sewage disposal agreements be modified. The most time sensitive of these is the need to extend the term of the agreements beyond their current 2036 termination date. Another change desired by the County is the ability to enact sewer rate

increases on an "emergency" basis. A third proposed change would modify that feature of the agreements that requires the unanimous concurrence of all agencies for certain types of agreement amendments. In addition, the Seattle agreement needs to be amended to drop the CSO related charge mentioned above. A more detailed discussion of the foregoing follows.

Extending the agreement term

The sewage disposal agreements provide the security for the wastewater utility's bonded debt. Unlike the cities and district's contracted with the County for sewage disposal service, the County does not have the ability to enforce collection of rates and charges directly upon the homes and businesses served by those cities and districts. The County's only means for collection of revenues are the sewage disposal agreements. The term of the agreements must therefore be at least as long as the term of the debt.

Cities and districts engaged in the direct "retail" provision of sewer or water service have considerable legal authority to enforce collection of rates and charges, including liens on the real property of customers it serves. The City of Seattle, for example, contracts with many suburban entities for the sale of water. Roughly half of its customers, however, are direct retail customers mainly in the City. Seattle has water system debt that extends beyond the term of its purveyor contracts. According to King County's bond counsel, Seattle is able to secure that debt with its retail ratepayer base. King County, whose wastewater system has no retail customers, has no similar option.

To take advantage of relatively low long-term interest rates, the County has recently been issuing bonds with 35 year terms. The utility's bonded debt cannot extend beyond the term of the agreements, so 2001 was the last for new 35 year issues until the agreements are extended. Shorter term bond issues compress repayment of the principal into fewer years, thereby increasing the sewer rate. Long-term debt, in addition to minimizing the annual rate impact, has also been traditionally viewed in the financial community as the most appropriate means for financing assets with long life.

The sewer rate impact of slightly shorter issues will not be great. For example, the monthly rate impact of a 30 year $125 million issue is estimated to be $.06 greater than for a 35 year $125 million issue. The impact would last for the term of the new debt. The impact of three consecutive 30 year $125 million issues could be as much as $.18 greater than for three consecutive 35 year $125 million issues. Our current financial forecast projects annual bond issues averaging $125 million for the next ten years.

The last extension added 20 years to the agreement term. This resulted in nominal 50 year agreements, when projected from the date of the extension proposal, which was roughly their original term. Another 20 year extension will push the termination date out to 2056, again returning the parties to agreements of approximately 50 years. When the last extension was proposed, the twenty-year time frame was viewed as sending a positive message to the lending community.

Amending the rate provision

The electrical energy crises several years ago highlighted a significant deficiency in the sewage disposal agreements. The agreements require that the County/Metro sewer rate for a given calendar year be adopted by July 1 of the previous year. After July 1, there is no opportunity to increase the rate for the following year to react to unforeseen developments.

For 2001 the Council adopted a sewer rate of $19.75 per month. Projected expenses for energy were $7.4 million. Electrical energy costs skyrocketed in late 2000 and stayed high into 2001.

Actual expenses for energy in 2001 turned out to be about $16.8 million. This unexpected $9.4 million increase occurred in the context of an operating budget of $78.5 million. The County was not able to raise the sewer rate for 2001 to cover that unanticipated cost. Employment of a somewhat esoteric accounting procedure (Financial Accounting Standard 71) allowed the County to avoid violation of its bond covenants, but this experience demonstrated the need for greater flexibility in the agreements regarding rate increases. Appropriate agreement amendment language has been developed and discussed with local agencies in several forums. The County's financial advisors have also suggested that the bond rating agencies would view greater rate setting flexibility favorably. Rating agency analysts have indicated that the current lack of flexibility was now an issue (see attachment).

Changing the Unanimous Concurrence Feature

The third desired change would address the feature of the agreements that requires concurrence of all contract agencies for any amendment of that part of the agreement that deals with distribution of the wastewater utility's costs and development and collection of the County sewer rate. As discussed below, that feature was changed in roughly one-third of the agreements ten years ago following an endorsement by the region's elected officials. King County believes that the public policy considerations that led to that recommendation continue to be valid. As it stands now, any single participant could veto certain contract changes, even if that participant represents less than one percent of the ratepayer base, as eighteen of them do.

Amending the Seattle agreement

As discussed below, the agreement with Seattle was amended in 1992 to include a provision for payment of a special charge to help offset Metro's costs of CSO control. As the County Council's Regional Water Quality Committee considered the financing of the Regional Wastewater Services Plan during 1998, committee members agreed that this charge would be terminated at such time that policies for an increased sewage treatment capacity charge were implemented. Consistent with that agreement, the Council adopted sewer rates for 2002 and subsequent years that assume no revenue from the special CSO charge. This decision will be appropriately reflected in the amendment of the Seattle agreement.

Past agreement changes

The agreements were last amended and their term extended about 10 years ago.

The last *extension* was accomplished in the late 1980s and early 1990s. Most agencies approved extensions to their respective agreements within eighteen months from the time that they were proposed in 1985. The City of Seattle, which constituted nearly half of Metro's customer base, approved an extension in 1992.

The agreements were last *amended* in 1992 to accomplish some changes in Metro's sewer rate structure. This was a longer and more complicated effort than the above-mentioned extension. It began in 1981. At that time the Metro Council appointed a special subcommittee of elected and appointed officials (Rate Structure Advisory Committee - RSAC) to examine how Metro distributed its wastewater treatment costs among local agencies.

The event that precipitated appointment of the RSAC was Metro's adoption in 1980 of a major plan to expand the treatment plant at Renton and construct an effluent transfer system from the Renton plant to Puget Sound. Significant near term rate increases were projected to finance this plan, although most of this infrastructure was necessary to serve future customers. Elected officials and some citizens objected to saddling existing customers with the cost of constructing facilities to serve future customers. There was also a belief that the existing rate structure resulted in a subsidy of non-residential customers by residential customers.

As part of its work, the RSAC was charged with developing whatever proposed changes to Metro's rate structure might be necessary to accomplish greater "equity" in the distribution of Metro's costs. Between 1981 and 1989 the RSAC developed four recommendations. The most significant of these were that:

1) Metro should levy a capacity charge on new customers to help offset the costs of growth; and

2) The residential customer equivalency (RCE) value used to charge agencies for non-residential customers should be lowered from 900 cubic feet per month metered water consumption to 750. (This would have the effect of shifting more of the Metro's wastewater treatment "cost burden" onto multi-family, commercial and industrial customers.)

Of the two other recommendations one attempted to address local system infiltration/inflow by requiring a certain level of local agency investment in local system rehabilitation and replacement. The other addressed the feature of the agreements that requires concurrence of all contract agencies for any changes in that part of the agreement that deals with the distribution of Metro's costs and development and collection of Metro's sewer rate. The RSAC recommended that this feature be addressed with a new agreement provision that obligated all agencies to

concur with any amendment that was agreed to by those agencies representing 90 percent of the wastewater treatment customer base.

All four recommendations were incorporated into an agreement amendment that was crafted with the help of the Metropolitan Water Pollution Abatement Advisory Committee (MWPAAC) and then distributed to local agencies for legislative body approval and signature. Within several months 9 of 34 agencies approved the amendment with all four changes but a number of others objected to the infiltration/inflow and super majority provisions. Those two provisions were then dropped and all remaining agencies eventually approved amendments incorporating the capacity charge and RCE change. This amendment effort took two and one half years. It followed nine years of consensus building through the RSAC process.

The RSAC made one additional recommendation that applied only to Seattle—payment of a special charge to help offset Metro's costs related to CSO control. The charge, which was indexed to capacity charge receipts, was included in the Seattle amendment. During the development of the Regional Wastewater Services Plan in the late 1990's, the region's elected officials agreed to terminate the charge upon implementation of new capacity charge policies. Those new policies have now been implemented.

Prepared by Bob Hirsch
Wastewater Treatment Division
Department of Natural Resources
February 2, 2002/Revised January 6, 2004

Attachments (1)

MEMORANDUM

Date August 17, 2001

To Nigel Lewis, King County

From Jim Hattori, Hattori & Associates, LLC

Re Interim Mechanism for Adjusting Wastewater Rates

The purpose of this memo is to examine the possible rating and credit implications of an amendment to the component agency contracts that would allow for interim adjustments to the County's wholesale wastewater rate. As you know, under the current contracts, the County must adopt a rate by June 30 of each year for implementation on January 1 of the following year. The current contacts do not permit any additional adjustment of this annual rate.

Until this year, this contractual provision had not been an issue since the wastewater utility had not experienced a serious deviation between its actual and budgeted revenues and expenses. However, this situation changed in late 2000 and 2001 when energy costs skyrocketed. To address the specific financial and credit implications of the energy crisis, the County declared its intention to utilize FAS 71, which will allow the County to amortize a portion of its energy costs, and adopted rates for 2002 based on strengthened financial targets.

Fortunately, these actions—in conjunction with the County's strategy to deal with other aspects of the energy crisis—were sufficient to preserve the County's wastewater bond ratings. However, this situation did highlight the lack of flexibility in adjusting rates within the component agency contracts. Although I am not aware of any systematic review of utility flexibility in adjusting rates, I expect that it is very rare that a utility would not have the ability to adjust rates to address costs increases or revenue shortfalls. While implementation of FAS 71 is an acceptable method for addressing dramatic increases in expenses, the rating agencies and bond investors still view adjusting rates to meet such increases as a preferable response. Further, in the event of an unanticipated decrease in revenue, FAS 71 would not be an appropriate corrective mechanism. If the County's wastewater utility were to experience a revenue shortfall, it would have only limited means, e.g. cuts in operating expenditures, to manage the ensuing financial results.

During the course of our conversations with the rating agencies this past year, the County expressed its intent to pursue an amendment to the contract that would allow for interim rate adjustments. The rating analysts did indicate that the lack of such flexibility under the current contracts was an issue and that they would follow the progress in obtaining agreement for this amendment.

Thus, while the County was able to deal with the financial implications of the energy crisis, the County's ability to address similar situations in the future would be greatly aided by an amendment to the component agency contracts that would allow for interim rate adjustments.

Please call me at (206) 524-4665 should you have any questions regarding this memo.