

AGREEMENT FOR SEWAGE DISPOSAL
BETWEEN
THE CITY OF EVERETT
AND
MUKILTEO WATER DISTRICT

THIS AGREEMENT made as of this 4 day of July, 1983, between MUKILTEO WATER DISTRICT of Snohomish County, a municipal corporation of the State of Washington, hereinafter referred to as the "District" and THE CITY OF EVERETT, a municipal corporation of the State of Washington, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, the City and the District previously entered into a Contract on September 7, 1977, regarding sewage disposal; and

WHEREAS, the City and the District wish to rescind said Contract upon the entering of this Contract; and

WHEREAS, the City and the District recognize the need for the District to participate in the costs of certain facilities of the City sewerage system which are necessary to serve the District; and

WHEREAS, the District agrees to contribute toward the costs of said City sewer facilities which benefit the District.

NOW, THEREFORE, the parties agree:

I.

(A) In order that the City may provide sanitary sewerage transmission and treatment services for sewage flowing from the District into the City sewer system, the City and the District agree that the following sewerage system facilities shall be constructed and maintained by the City to service the following capacity requirements of the District:

Facility	District Capacity Requirements
S. End Interceptor to Southwest Interceptor	2,500 gpm
S. End Interceptor Northern Segment	2,500 gpm
Headworks	2,500 gpm
Sewer Treatment Plant	1.7 MGD

Based on the above-stated District capacity requirements, the estimated costs for the District's share of the above-facilities is set forth in Exhibit A attached hereto and incorporated herein by reference. The capacity requirement immediately above are defined as follows:

GPM shall be defined as the average maximum flow over a one hour period.

MGD shall be defined as the average daily flow over a one year period.

(B) It is currently anticipated that the following sewerage system facilities shall be improved by the City in order to provide capacity in the following total amounts:

Facility	Total Facility Capacities
S End Interceptor to Southwest Interceptor	29,700 gpm
S. End Interceptor Northern Segment	40,300 gpm
Headworks	80,000 gpm
Sewer Treatment Plant	40.4 MGD

The above shall be defined in accordance with definitions set forth above.

The District Capacity Requirements in Section (A) above were established by the District and submitted by the District to the City for inclusion in this Agreement. In reliance on said District Capacity Requirements established by the District, the City will size, design and construct, maintain or improve sewer facilities to serve both the City's and the District's capacity requirements. In the event that it is determined that the City's or the District's sewage flows exceed their respective capacity requirements, the City or the District, whichever is exceeding its allotted capacity, shall pay any and all damages or fines incurred by the City or the District in any manner related to or arising from exceeding the stated District or City Total Capacity Requirements. City shall notify District at any time that facility capacity problems are anticipated by the City and the City and the District shall meet to discuss and plan for future remedial measures at any time after the City's or District's flows exceed 80% of its above-stated capacity requirements. In the event the District exceeds its allotted capacity and the City and District have not reached agreement as to remedial measures, the City, after notification to the District, may take any one or all of the following remedial steps: (1) Refuse to allow any new sewer connections in the area tributary to the undersized facility; (2) Re-size, re-design and re-construct or improve the above facilities to such capacity as is determined will accommodate the capacity required; (3) Purchase or sell capacity from City or other District; and/or (4) Take all reasonable steps to reduce loading. In the event the City elects the second remedial step, the District agrees, as liquidated damages, to pay to the City all costs incurred by the City for the design and improvement of any of said facilities, including but not limited to all costs set forth in Section I(C) hereof, except the cost of design and construction to meet the City's and or other Districts' additional capacity requirements. Said costs shall be due and payable as provided in Section I(C). In the event that step (1) above is deemed necessary by the City

or District, the party contemplating action shall submit notice thereof at least thirty (30) days prior to taking final action. The District shall have no responsibility for total facility capacities, except as provided herein; provided that, in the event the City determines to refuse new connections tributary to facilities which are at or exceed capacity, District will refuse also to allow new connections to such facilities.

The City shall take all reasonable actions to ensure the preservation to the District of any and all unused District capacity throughout that part of the Everett sewerage system described in §I hereof serving the District, until used and/or sold by the District. In the event the City utilizes the full capacity of said part of the system affecting the District prior to the District's full use of its contracted capacity, either of the following remedies shall apply, at the election of the District:

- 1) The City shall compensate the District in monies for its loss of the remaining portion of its unused capacity. Compensation shall be by negotiation and, in the event the parties cannot agree upon such compensation, the amount shall be determined by arbitration under the procedure set forth in §II hereof.
- 2) City shall, at its own expense, expand its facilities, in order to accommodate the balance of the District's contracted for capacity.

(C) The District agrees to pay to the City from the gross revenues of the sewer system the following percentage share of total costs of said facilities (said percentage share being calculated by dividing the District's Capacity Requirements by the Total Facility Capacities above):

<u>Facility</u>	<u>Percentage Share Of Total Cost Payment to City</u>
S. End Interceptor to Southwest Interceptor	8.4%
S. End Interceptor Northern Segment	6.2%
Headworks	3.1%
Sewer Treatment Plant	4.2%

The total cost of each facility to which said percentage shall be applied shall include but not be limited to engineering costs and fees, all payments to consulting engineers or contractors, or otherwise, for labor, materials, equipment, overhead, etc., right-of-way, or land costs, testing, inspection, legal fees, and interim financing costs. Payments to the City shall commence with approval by the City of the Engineer's and/or the Contractor's progress payments for work performed so that payments from the District will coincide with the City's payments to Engineers/Contractors. Final total costs will be established and adjusted upon release of all claims against said projects. The District's obligation to the City shall be junior to all present and future bonded indebtedness of the District.

II.

In addition to the payments set forth in Section I above, the District shall pay the City from the gross revenues of its sewer system a sewage disposal maintenance and operation charge (M & O charge) determined on the basis of 38% of the City's monthly sewer service rate for single family residences X 1.20 surcharge X total District customer equivalents. Payments shall be monthly, due within thirty (30) days of billing.

The General formula for determination of the M & O Charge is:

District % Share of Total Costs X City Single Family Service Rate

District % of Total Customer Equivalents

X 1.20 Surcharge

= Monthly Sewer Rate Per Customer Equivalent

in accordance with the following understandings:

(A) Customer equivalents shall be single family residence equivalents and shall constitute the total number of single family residences to which the District or the City provides service and effluent to the City's treatment plant, plus all other metered water usage divided by 900 cubic feet per month. The City's total single family equivalents shall be determined from the City's December billings. The District's single family equivalents shall be determined monthly for purposes of determining the District's monthly M & O Charge. For purposes of determining the District's percentage of total equivalents, the determination shall be based on the District's December billing.

(B) The City's monthly service rate shall be the current City of Everett single family residence sewer service rate; or as such rate may be revised in the future.

(C) The District's % share of total costs for the year 1981 is agreed to be 0.65%.

The District's % of total system customer equivalents for the year 1981 is agreed to be 1.7%

The District's % of City monthly service rate (before 1.20 surcharge) is agreed to be 38% for the year 1981.

On or about February of 1983, and each year thereafter, the City shall submit to the District a proposed new percentage of City monthly service rate to be used for the forthcoming year, together with a summary of the final previous year's sewer expenditures. Said new percentage of total costs shall be applied to the monthly M & O charge commencing April 1, 1983, through March 31, 1984, and each year thereafter shall be subject to modification as provided herein. In the event of disagreement between the City and the District as to the District's percentage share of total costs for the forthcoming year,

the parties shall arbitrate their differences in accordance with the commercial arbitration rules of the American Arbitration Association, using a three-arbitrator panel through the Seattle Regional Office. The determinations made by the panel shall be retroactive to April 1 of such year.

The District's percentage share of total costs is not expected to include all Everett sewer system costs. The previous year's cost analysis may be used as a guideline wherein, after determination of the District's percentage share of total customer equivalents as of December 31, line items of the Everett sewer system expenditures were reduced or increased in accordance with the exercise of judgment and experience as to the costs to serve the District. In determining the District's percentage share of total costs, it is agreed that the following guidelines will be followed:

- (1) The District shall not be charged for in-City drainage.
- (2) The District shall not be charged the costs of construction and maintenance of lateral or collector service lines to in-City customers.
- (3) Because of the District's current payment for capital facilities as stated in Article 1 hereof, the District shall not be charged for the City's 1980 bond issue. The District will be charged in accordance with its total percentage of total customer equivalents as of December 31 each year on the 1978 bond issue. District's M & O shall not include future bond issues of the City except in the event City bond issue funds are used to construct facilities of benefit to the District. The parties shall meet to discuss said benefits.
- (4) Mukilteo shall not be charged lift station costs as long as it continues not to utilize any City lift stations.
- (5) Unless actual cost analysis demonstrates a higher amount of benefit, the District shall be charged at 1% of the following costs:
 - Maintenance of manholes and lids
 - Cleaning sewer mains
 - Repair of sewer mains
 - Customer records and collection

(6) The following general system costs will be applied in accordance with the District's December 31 percentage of total customer equivalents:

- Treatment and lagoon operations, including sewer lagoon acquisition costs in the event such costs are paid from this account
- Administration and supervising costs
- Engineering and records
- Outside services and consulting
- Injuries and damages (insurance)
- Bad debts and uncollectable expenses
- Regulatory expenses
- Miscellaneous general expenses
- General Plant
- Taxes and payments in lieu of tax
- Interest on accounts

(7) Special programs which are not included as a capital cost under Article I herein will be analyzed by City and District according to benefits.

(8) The 20% surcharge shall remain constant.

The City shall notify the District in writing of all contemplated rate changes in order to allow the District to appear and present evidence. Said notice shall be the same as for citizens of the City. If the City fails to so notify, the District shall be allowed a special hearing to present evidence for the Council concerning rate modification.

III.

The District may deliver to the City all of the sewage and industrial waste collected by the District within the boundaries of Exhibit B, and the City shall accept the sewage and waste delivered for treatment and disposal as hereinafter provided subject to such reasonable rules and regulations as may be adopted from time to time by the City Council, subject to capacities set forth in Section I hereof. In the event that an adjacent city/district obtains capability to serve certain areas of the District as determined by the District to be beneficial to it then and in that event, after notification to the City 60 days prior to the flow diversion and consultation with the City, the District may in its sole discretion serve such areas by connections to others in a different flow direction. This will not release the District from any portion of any required payments to the City under §I above.

IV.

Sewerage facilities of the District which may be required for the delivery of sewage and wastes to the City may be connected to facilities of the City sewerage system. Such connection shall be accomplished at the expense of the District and in accordance with the rules and regulations of the City. The initial points of connection of the District's system to the City's system are herewith fixed and shall be in the trunk lines of the City system. The City and the District may, as hereinafter provided, mutually agree to designate additional or alternate points of connection for receiving the District's sewage to the City system which may include connections to other districts which in turn connect to the City system. The District has already installed flumes to measure inflow into City's system. City will install metering devices to measure its inflow into District's system. The District and the City shall install at their respective expense flow recording devices at locations which will best measure incoming sewage flows when capacity concerns become evident.

V.

The District shall be responsible for the delivery to the City sewerage system of sewage collected by the District which is required to be delivered to the City hereunder, 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 City sewerage system. It is expressly understood that the District will be responsible for the delivery of its sewage to the City sewerage system at such points as provided in Article IV. The City may but shall not be obligated to construct trunk lines and pump stations located within the District upon reasonable notice to the District. It is contemplated that the District will build local sewers or build or secure the use of other facilities to deliver its sewage

to the City at the points hereinbefore described. All District sewers or other temporary sewerage facilities carrying sewage delivered to the City shall be constructed and maintained in accordance with the rules and regulations of the City which shall be consistent with APWA, DSHS and DOE standards. All such District sewers or temporary facilities will be maintained by the District at no expense or risk to the City.

VI.

City may upon written approval of the District discharge sewage into District sewerage facilities within the District service areas contemplated under this Agreement; whenever District sewage capacity is available; provided further that in such event, the City shall be obligated to pay its fair pro-rated share of the facility based on the method of assessment used to finance said facility and M & O costs related to such discharges, including but not limited to lift station costs.

VII.

Permanent books and records shall be kept by the City and the District in order to establish rates, volumes of sewage delivered and discharged into and treated by the City sewerage system wherever such volumes are measured and the number of Residential Customers and Residential Customer Equivalents reported. The records required by this paragraph shall be available for examination by either party at any reasonable time after five (5) working days' notice for a period of seven years.

VIII.

In the event of third party claims for injuries or damages arising out of or related to this Agreement, the City and the District shall have rights of indemnity against the other at any time after a claim is filed and for a period of three years following release or payment of a claim. Indemnification shall be determined on the basis of proportionate share of fault, if

any. In the event that a lawsuit is filed against either party in which the other is not named, rights of indemnification shall be determined by binding arbitration under the procedure described in Article II hereof.

IX.

The District shall not have the right to assign this Agreement or any of its rights and obligations hereunder either by operation of law or by voluntary agreement without the written consent of the City and neither party may 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. Provided that the District, by agreement of the City, may sell unneeded capacity to others who are a party to agreements with the City.

X.

In the event the City annexes any of the District's area served by facilities under this Agreement, then the City at any time may elect to provide sewer service to customers served by the District in the City's annexed area. If the City so elects, the District's Capacity Requirements shall be reduced proportionately as the sewage flows in the annexed area relate to the total District sewage flows, as stated in Section I hereof, and the City shall be required to pay compensation to the District for said customers and capacity as follows:

A. Local facilities serving customers in the annexed area shall become the responsibility of the City; provided that the District shall continue to maintain and be responsible for any general District facilities, such as lift stations, or interceptors, trunk sewers and laterals serving both the annexed area and the non-annexed area. In cases where sewage from such annexed areas is transmitted through general District facilities to City facilities, the City shall pay the District the maintenance and operation M & O charge determined from the following general formula:

$$\begin{aligned}
 & \frac{\text{City's \% of Share of Total Costs X District Single Family Service Rate}}{\text{City's \% of Total Customer Equivalents}} && \times && 1.20 \text{ Surcharge} \\
 & \text{less the City's Monthly Sewer Rate to District} \\
 & = \text{Monthly Sewer Rate Per Customer Equivalent}
 \end{aligned}$$

The guidelines for determining the above rates shall be consistent with those shown in §II herein.

Pursuant to RCW 35.13A, the City shall make annual payments to the District for the annexed area's pro-rata share of the District's total outstanding sewer revenue bond obligations in accordance with annexed area's pro-rata share of the remaining annual payments schedule of said obligations at the time of election. In the event that there are any local facilities in the annexed area assumed by the City which have been constructed with District-wide funds or revenue bond funds (excluding developer or privately installed facilities or facilities constructed from assessments in the annexed area), then the City shall pay the greater of either the total amount of the said pro-rata share of the District's outstanding bonded indebtedness or the depreciated value of said local facilities based on a 50 year straight line depreciation of actual costs. Payment of the said annexed area's share of the District's outstanding indebtedness shall be made annually thirty (30) days prior to the District's bonded indebtedness payment schedule. Payment for the said depreciated value of District constructed local facilities shall be lump sum upon the City's election to assume said facilities unless otherwise agreed. Where the City effluent flows into District facilities, then the City shall pay to the District according to the same formula.

B. In the event that the total due under §XA above is not sufficient to compensate the District for the annexed area's pro-rata share of sewer system facilities, as paid to the City

by the District under Section I hereof, then the City shall increase the amount due under (§)XA by an amount equal to the annexed area's pro-rata share of sewer system facilities as provided in Section I hereof, said amount to be based on the depreciated value of said facilities on the date of the City's election to serve, as determined on a 50 year straight line depreciation formula. In the event that there is an amount due hereunder and said amount is to be added to the annexed area's share of annual payments on outstanding indebtedness, then the total due shall be amortized in equal payments on the basis of the outstanding bond issue having the least number of years remaining to be paid. In the event that the amount due hereunder relates to District-constructed facilities under (§)XA above, then the total due hereunder shall be lump sum due on the date of the City's election.

C. Any annexations made by the City of portions of the sewer function of the District where the City takes action to provide service to District customers shall remove such areas from the sewer function of the District for all purposes except payments for bonded indebtedness as set forth herein.

XI.

This Agreement shall be in full force and effect and binding upon the parties until March 31, 2023.

Thereafter, the parties shall be required to continue service for additional five year periods in the event the other party gives notice of intent to continue pursuant to the above procedure until the year 2033 at which time, in the event the parties mutually agree that sewer treatment and transmission service by the City should be continued, the parties shall meet and negotiate mutually acceptable terms for continued service.)

XII.

The September 7, 1977 Contract between the parties is hereby rescinded.

DATED:

May 4 1983

MUKILTEO WATER DISTRICT

CITY OF EVERETT

Frank Brennan
Commissioner

William E. Moore
WILLIAM E. MOORE, Mayor

Ronald Asani
Commissioner

ATTEST:

Michael Y. Baker
Commissioner

Leanne Moschese
City Clerk

ATTEST:

Edward Wheeler

APPROVED AS TO FORM:

Edward Wheeler
City Attorney