



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

June 1, 2004

Ordinance 14924

Proposed No. 2004-0138.1

Sponsors Edmonds

1 AN ORDINANCE authorizing the executive to enter into
2 agreements with the Muckleshoot Indian Tribe for disposal
3 of sewage.

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BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

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SECTION 1. The executive or the executive's designee is hereby authorized to

Ordinance 14924

8 enter into an agreement with the Muckleshoot Indian Tribe, substantially in the form of
9 Attachment A to this ordinance, for treatment and disposal of sewage.

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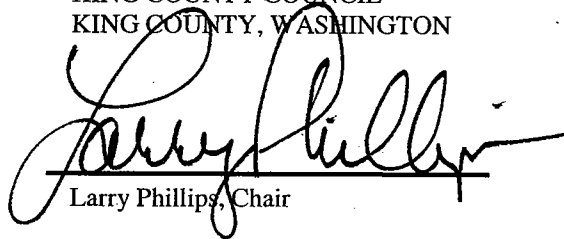
Ordinance 14924 was introduced on 3/22/2004 and passed by the Metropolitan King County Council on 6/1/2004, by the following vote:

Yes: 12 - Mr. Phillips, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr. Pelz, Mr. McKenna, Mr. Ferguson, Mr. Hammond, Mr. Gossett, Ms. Hague, Mr. Irons and Ms. Patterson

No: 0

Excused: 1 - Mr. Constantine

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



Larry Phillips, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 10 day of June, 2004.



Ron Sims, County Executive

Attachments

A. King County Muckleshoot Indian Tribe Agreement for Sewage Disposal

RECEIVED
2004 JUN 14 AM 11:24
KING COUNTY COUNCIL
CLERK

KING COUNTY
MUCKLESHOOT INDIAN TRIBE
AGREEMENT FOR SEWAGE DISPOSAL

THIS AGREEMENT, made as of this _____ day of _____ 2004,
between the MUCKLESHOOT INDIAN TRIBE, a federally recognized Indian Tribe occupying
and exercising governmental authority over the Muckleshoot Indian Reservation located in King
County, Washington, hereinafter referred to as the "Tribe", and King County, a political
subdivision of the State of Washington, hereinafter referred to as "the County";

WITNESSETH:

WHEREAS, the public health, welfare and safety of the Tribe and its members residing
within the Muckleshoot Indian Reservation and the residents of the County require the
development of adequate systems of sewage collection and disposal, the elimination of water
pollution and the preservation of the fresh and salt water resources of the area; and

WHEREAS, growth of population, topographic conditions, and preservation of water
require that certain sewage disposal works be constructed and operated and that local sewer
service agencies within the Metropolitan Area dispose of their sewage in accordance with a
comprehensive plan for the Metropolitan Area; and

WHEREAS, the County is engaged in developing and operating a Metropolitan Sewage
Disposal System and the Tribe is engaged in developing a sewage collection system for the
Tribe; and

WHEREAS, the Tribe desires to deliver certain sewage collected by the Tribe to the
County for disposal as soon as facilities necessary for such delivery are available; and

WHEREAS, to provide for the disposal by the County of sewage collected by the Tribe it is necessary that an agreement be now entered into establishing certain rights and duties of the parties incident thereto;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is hereby agreed as follows:

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

(a) The words "Comprehensive Plan" shall mean the Comprehensive Sewage Disposal Plan adopted in Resolution No. 23 of the Municipality of Metropolitan Seattle and all amendments thereof or hereafter adopted.

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

(c) The words "Local Sewerage Facilities" shall mean all facilities owned or operated by a Participant for the local collection of sewage to be delivered to the Metropolitan Sewerage System and all side sewers and connection fittings connected directly to such System, which serves customers of such Participant.

(d) The words "Metropolitan Area" shall mean the area contained within the boundaries of King County as now or hereafter constituted.

(e) The word "Participant" shall mean each city, town, county, sewer district, municipal corporation, federally recognized Indian Tribe, person, firm or private corporation which shall dispose of any portion of its sanitary sewage into the Metropolitan Sewerage System and shall have entered into an agreement with the County providing for such disposal.

(f) The word "Residential Customer" shall mean a single-family residence billed by a Participant for sewerage charges or a single-family residence served by the Tribe.

Section 2. Delivery and Acceptance of Sewage. The Tribe shall deliver to the County all of the sewage and industrial waste collected by the Tribe and the County shall accept the sewage and waste delivered for treatment and disposal as hereinafter provided subject to such reasonable, non-discriminatory rules and regulations as may be adopted from time to time by the King County Council. Except for the City of Auburn, the County shall not directly accept sewage or wastes from any person, firm or corporation which is located within the boundaries of or is delivering its sewage into the Local Sewerage Facilities of the Tribe without the written consent of the Tribe. The Tribe shall not deliver sewage to any other agency for disposal without the written consent of the County.

Section 3. Construction of County Facilities. The County shall construct, acquire or otherwise secure the right to use all facilities required for the disposal of sewage delivered to the County pursuant to this Agreement and shall perform all services required for the maintenance, operation, repair, replacement or improvement of the Metropolitan Sewerage System, including any additions or betterments thereto. The County shall in its sole discretion determine the nature, location and time of construction of facilities of the Metropolitan Sewerage System.

Section 4. Connection of Local Sewerage Facilities to the Metropolitan Sewerage System. Local Sewerage Facilities of the Tribe which may be required for the delivery of

sewage and wastes to the County shall be connected to facilities of the Metropolitan Sewerage System at such time as any of the facilities of such Metropolitan Sewerage System shall be available to receive sewage collected by such local facilities. Such connection shall be accomplished at the expense of the Tribe and in accordance with the rules and regulations of the County at such point or points as shall be determined by the County. The Tribe shall pay for, or otherwise secure, the right to use all Local Sewerage Facilities of another participant which may be required to deliver the Tribe's sewage to the Metropolitan Sewerage System.

Section 5. Payment for Sewage Disposal. Commencing with the first month in which sewage is collected and delivered by the Tribe to the County, the Tribe shall pay to the County on or before the last day of each month during the term of this Agreement, a sewage disposal charge determined as provided in this Section 5.

1. For the quarterly periods ending March 31, June 30, September 30 and December 31 of each year every Participant shall submit a written report to the County setting forth (a) the total number of Residential Customers billed by such Participant (or, in the case of the Tribe, served by the Tribe), as of the last day of the quarter, (b) the total number of all customers billed by such Participant (or served by the Tribe), as of such day, and (c) the total water consumption during such quarter for all customers billed by such Participant (or served by the Tribe), other than Residential Customers. The quarterly water consumption report shall be taken from water meter records and may be adjusted to exclude water which does not enter the sanitary facilities of a customer. Where actual sewage flow from an individual customer is metered, the metered sewage flows shall be reported in lieu of adjusted water consumption. The total quarterly water consumption report in cubic feet shall be divided by 2,250 to determine the number of Residential Customer equivalents represented by each Participant's customers other than single-

family residences. The County shall maintain permanent records of the quarterly customer reports from each Participant.

The Tribe's first quarterly report shall cover the first quarterly period following the date when sewage is first delivered to the County and shall be submitted within thirty days following the end of the quarter. Succeeding reports shall be made for each quarterly period thereafter and shall be submitted within thirty (30) days following the end of the quarter.

2. a) To form a basis for determining the monthly sewage disposal charge to be paid by each Participant during any particular quarterly period, the County shall ascertain the number of Residential Customers and Residential Customer equivalents of each Participant. This determination shall be made by taking the sum of the actual number of Residential Customers reported as of the last day of the next to the last preceding quarter and the average number of Residential Customer Equivalents per quarter reported for the four quarters ending with said next to the last preceding quarter, adjusted for each Participant to eliminate any Residential Customers or Residential Customer equivalents whose sewage is delivered to a governmental agency other than the County or other than a Participant for disposal outside of the Metropolitan Area.

b) For the initial period until the Tribe shall have submitted six consecutive quarterly reports, the basic reported number of Residential Customers and Residential Customer equivalents of the Tribe shall be determined as provided in this subparagraph (b). On or before the tenth day of each month beginning with the month prior to the month in which sewage from the Tribe is first delivered to the County, the Tribe shall submit a written statement of the number of Residential Customers and Residential Customer equivalents estimated to be billed and/or served by the Tribe during the next succeeding month. For the purpose of determining

the basic reported number of Residential Customers or Residential Customer equivalents of the Tribe for such next succeeding month, the County may at its discretion adopt either such estimate or the actual number of Residential Customers and Residential Customer equivalents reported by the Tribe as of the last day of the next to the last preceding reported quarter. After the Tribe shall have furnished six consecutive quarterly reports the basic reported number of Residential Customers and Residential Customer equivalents of the Tribe shall be determined as provided in the immediately preceding subparagraph (a).

c) If the Tribe shall fail to submit the required monthly and/or quarterly reports when due, the County may make its own estimate of the number of Residential Customers and Residential Customer equivalents of the Tribe and such estimate shall constitute the reported number for the purpose of determining sewage disposal charges.

3. The monthly sewage disposal charge payable to the County shall be determined as follows:

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

b) To determine the monthly rate per Residential Customer or Residential Customer equivalent to be used during said next succeeding calendar year, the total monetary requirements for the disposal of sewage as determined in subparagraph 3(a) of this section shall be divided by

twelve and the resulting quotient shall be divided by the total number of Residential Customers and Residential Customer equivalents of all Participants for the October-December quarter proceeding said July 1st.

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

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 requirements or 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 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 also conforms to the sewage disposal agreements with all remaining participants. Any charge under this subparagraph 3.d) shall only be applied if the cost is applied to all Participants.

4. The parties acknowledge that the County may impose a charge or charges directly on the future customers of a Participant for purposes of paying for capacity in Metropolitan Sewage Facilities and that such charges shall not constitute a breach of this agreement or any part thereof. The proceeds of said charge or charges, if imposed, shall be used only for capital expenditures or defeasance of outstanding revenue bonds prior to maturity.

In the event such a charge or charges are imposed, the Tribe shall, at the County's request, provide such information regarding new Residential Customers and Residential Customer equivalents as may be reasonable and appropriate for purposes of implementing such a charge or charges.

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

6. The Tribe irrevocably obligates and binds itself to pay its sewage disposal charge from general revenues of the Tribe. If said revenues are insufficient, the Tribe irrevocably obligates and binds itself to pay its sewage disposal charge out of the gross revenues of the sewage system of the Tribe and further binds itself to establish, maintain and collect charges for sewer service which will at all times be sufficient to pay all costs of the maintenance and operation of the sewer system of the Tribe, including the sewage disposal charge payable to the County hereunder, and sufficient to pay any revenue bonds of the Tribe which shall constitute a charge

upon such gross revenues. It is recognized by the County and the Tribe that the sewage disposal charge paid by the Tribe to the County shall constitute an expense of maintenance and operation of the sewer system of the Tribe. The Tribe shall provide in the issuance of future sewer revenue bonds of the Tribe that expenses of maintenance and operation of the sewer system of the Tribe shall be paid before payment of principal and interest of such bonds. The Tribe shall have the right to fix its schedule of rates and charges for sewer service. In the event the Tribe fixes rates and charges for purposes of billing its customers it shall fix them at a level sufficient to meet the covenants contained in this agreement.

Section 6. Responsibility of Tribe. The Tribe shall be responsible for the delivery to the Metropolitan Sewerage System of sewage collected by the Tribe, for the construction, maintenance and operation of Local Sewerage Facilities, and for the payment of all costs incident to the collection of such sewage and its delivery to the Metropolitan Sewerage System. All sewerage facilities of the Tribe carrying sewage delivered to the County shall be constructed and maintained in accordance with the rules and regulations of the County and shall be constructed, maintained and operated by the Tribe at no expense or risk to the County. The Tribe, at its option, may apply more restrictive standards to its sewage facilities so long as said standards do not adversely affect the Metropolitan Sewage System.

Section 7. Records. Permanent books and records shall be kept by the County and the Tribe of the respective rates established, the volumes of sewage delivered and discharged into the Metropolitan Sewerage System whenever such volumes are measured and the number of Residential Customers and Residential Customer equivalents reported. In addition, the County shall keep complete books of account showing all costs incurred in connection with the Metropolitan Sewerage System and the Tribe shall keep complete records showing the amount

billed to each of its customers for sewer service and the basis used for such billing including sewage flow and water consumption for each customer where applicable. The records required by this paragraph shall be available for examination by either party at any reasonable time.

Section 8. Development of Metropolitan Sewerage System. It is contemplated that the Metropolitan Sewerage System will be developed in stages and the nature of facilities to be constructed, acquired or used and the time of such construction, acquisition or use shall be determined by the County, it being contemplated that the County shall ultimately provide sewage disposal service for the entire Metropolitan Area.

Section 9. Insurance and Liability for Damages. The Tribe shall secure and maintain with responsible insurers all such insurance as is customarily maintained with respect to sewage systems of like character against loss of or damage to the sewerage facilities of the Tribe and against public and other liability to the extent that such insurance can be secured and maintained at reasonable cost. Any liability incurred by the County as a result of the operation of the Metropolitan Sewerage System shall be the sole liability of the County and any liability incurred by the Tribe as a result of the operation of the Local Sewerage Facilities of the Tribe shall be the sole liability of the City/District.

Section 10. Assignment. The Tribe 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 County 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. In the event that the Tribe should be dissolved or should no longer be authorized to operate sewer facilities, the Local Sewerage Facilities owned and

operated by the Tribe shall be assigned and transferred to the County subject to any outstanding debts of the Tribe which had been incurred for the specific purpose of construction or acquiring such facilities and subject to the acceptance by the County of the obligation to continue to provide sewer service to the residents served by such local facilities upon payment by such residents of sewage disposal charges determined as herein provided and the reasonable costs of local sewer service. In the event of said assignment, and subsequent reauthorization of the Tribe to operate sewer facilities, the County shall return operation of the local sewage facilities to the Tribe, subject to any outstanding debts of the County which had been incurred for the specific purpose of constructing or acquiring such facilities.

Section 11. Effective Date and Term of Agreement. This Agreement shall be in full force and effect and binding upon the parties hereto upon the execution of the Agreement and shall continue in full force and effect until July 1, 2056.

Section 12. Notice. Whenever in this Agreement notice is required to be given, the same shall be given by registered mail addressed to the respective parties at the following addresses:

King County
201 S. Jackson St.
Seattle, WA 98104

Muckleshoot Indian Tribe
c/o Director of Public Works
39015 172nd Ave. S.E.
Auburn, WA 98092

unless a different address shall be hereafter designated in writing by either of the parties.

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

Section 13. Execution of Documents. This Agreement shall be executed in three counterparts, any of which shall be regarded for all purposes as one original. Each party agrees that it will execute any and all deeds, leases, instruments, documents and resolutions or ordinances necessary to give effect to the terms of this Agreement.

Section 14. Waiver. No waiver by either party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or a different provision of this Agreement.

Section 15. Remedies. In addition to the remedies provide by law, this Agreement shall be specifically enforceable by either party.

Section 16. Limited Waiver of Sovereign Immunity. The Tribe expressly, unequivocally, and irrevocably waives, in the limited manner set out herein and for no other purpose, its sovereign immunity from suit in favor of King County, and in favor of no other person, entity or government and for the benefit of no other person, entity or government, and consents to the personal jurisdiction of any court referenced herein, for the sole purpose of and to the full extent necessary to allow King County to enforce the terms and conditions of this Agreement. As a consequence of his limited wavier, the Tribe consents to the personal jurisdiction of any court referenced herein with respect to any action to enforce any of the terms and conditions and/or rights and remedies under this Agreement, as well as with respect to any action to collect or enforce any amounts due under this Agreement or any subsequent judgments rendered in any action under this Agreement.

Under this limited waiver of sovereign immunity, any suit or proceeding brought by the County hereunder may be brought in any federal or state court of competent jurisdiction,

including any appellate courts, and the Tribe expressly, unequivocally, and irrevocably submits to the jurisdiction of such court, including any appellate courts, and agrees to give full legal effect to any order or judgment or appellate decisions therefrom.

The Tribe agrees that to the extent not pre-empted by federal laws, interpretation and/or enforcement of this Agreement shall be governed by the laws of the State of Washington. The Tribe further agrees that King County is the appropriate venue for any state court action brought under this Agreement.

The Tribe agrees that there will be no recourse to Tribal courts for the interpretation and/or enforcement of this Agreement. The Tribe expressly, unequivocally and irrevocably waives any recourse to Tribal courts and exhaustion of Tribal Court remedies. As such, the Tribe hereby agrees that under the limited waiver of sovereign immunity provided for herein, the assumption of jurisdiction of any federal or state court of competent jurisdiction shall not be delayed or curtailed by the assertion of any doctrine requiring exhaustion of any Tribal court remedies.

The Tribe agrees that service of process may be made by any means authorized by the laws or rules of the forum court. The Tribe acknowledges and agrees that for purpose of this Agreement, the Chairperson and the Vice Chairperson of the Tribe are persons authorized to receive service of process, and the address of the Tribe set out in this subpart 16, is the authorized address for mailing when service of process is by mail, unless the Tribe notifies the County in writing of a different address. 39015 172nd S.E., Auburn, WA 98092.

Section 17. Entirety. This agreement merges and supersedes all prior negotiations, representations and agreements between the parties hereto relating to the subject matter hereof and constitutes the entire contract between the parties.

Section 18: Future Amendments. The Tribe agrees to amend and hereby concurs in any amendment to this agreement which incorporates any changes in the terms for sewage disposal and payment therefor as may be proposed by the County and agreed to by those Participants that shall represent, in total, not less than 90% of the Residential Customers and Residential Customer Equivalents then served by the Metropolitan Sewerage System.

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

KING COUNTY

MUCKLESHOOT INDIAN TRIBE

By _____
Pam Bissonnette, Director
Department of Natural Resources and Parks

By _____
Tribal Council Chair

ATTEST:

ATTEST:
