

## INFORMATIONAL MEMORANDUM MPD

TO: **Tukwila Pool MPD Board President**

FROM: **Craig Zellerhoff, Fiscal Coordinator**

DATE: **November 14, 2012**

SUBJECT: **Interlocal Agreement with City of Tukwila**

### **ISSUE**

Consider for approval a draft Interlocal Agreement between the Tukwila Metropolitan Park District (MPD) and the City of Tukwila to establish the terms and conditions for the repayment of a proposed loan from the City of Tukwila to the MPD. Proceeds for the loan would be obtained through the City's issuance of bonds on behalf of the MPD to fund capital improvements to the Tukwila pool. The Agreement is presented to the Board for review and approval. This agreement will also be presented to the City of Tukwila Council for review and approval at the November 19, 2012 regular meeting

### **DISCUSSION**

The MPD is beginning a major capital project to renovate the Tukwila pool, its primary asset. Financing options have been researched and presented to the MPD Board of Commissioners for consideration over the past several months. At the October 15, 2012 MPD meeting, approval was received from the Board to move forward with a bond issuance by the MPD with a City guarantee.

Subsequent to the October 15 meeting, the City guarantee was discussed with Alice Ostdiek of Foster Pepper PLLC, the bond counsel for the City and the MPD. A recent ruling by the Washington Supreme Court concerning a debt guarantee by the City of Wenatchee concluded in part that, "public guarantee of debt is legally equivalent to a public debt." Ms. Ostdiek pointed out that, should the bonds be issued by the City on behalf of the MPD, the issuance would have the advantage of the City's credit rating.

As a result, the City of Tukwila proposes to issue bonds on behalf of the MPD to fund capital improvements to the Tukwila pool. Under this proposal, the City of Tukwila would loan the proceeds of the bond issuance to the MPD. The MPD would repay the loan from operating revenue and general taxes levied by the MPD.

As documented in the interlocal agreement, the City agrees to lend funds from the proceeds of a bond issuance to the MPD, not to exceed \$1,100,000.

The MPD agrees to assume and accept the financial obligation to repay the loan in amounts and on dates corresponding with the underlying bond debt service payment schedule.

### **RECOMMENDATION**

The Board is being asked to authorize the Board President to sign the Tukwila Metropolitan Park District-City of Tukwila Interlocal Agreement at the November 19, 2012 MPD meeting.

### **ATTACHMENT**

Draft Interlocal Agreement



**INTERLOCAL AGREEMENT**  
**by and between**  
**CITY OF TUKWILA and TUKWILA METROPOLITAN PARK DISTRICT**

This Agreement, dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012, is entered into by and between the **City of Tukwila, Washington** (the “City”), a code city organized under the laws of the State of Washington, and the **Tukwila Metropolitan Park District** (“TMPD”), a municipal corporation organized under the authority of Chapter 35.61 RCW (collectively, the “Parties”). This agreement is entered into under the authority of RCW 35.61.290, .300 and 67.20.010.

NOW, THEREFORE, the Parties agree as follows:

**Section 1. Recitals – Purpose of Agreement**

1.1. The City of Tukwila is a code city operating under chapter 35A RCW and other applicable state law, and the Tukwila Metropolitan Park District is a municipal corporation created pursuant to a vote of the people held in August 16, 2011 under chapter 35.61 RCW with responsibility for ownership and operation of the Tukwila Pool.

1.2. The City and the TMPD are in need of funds with which to undertake needed improvements, repairs and upgrades to the pool and related facilities owned and operated by the TPMPD (the “Pool Improvement Project” or the “Project”), all as more specifically described in Exhibit A, which is incorporated by this reference.

1.3. RCW 67.20.010 authorizes “Any city...any separately organized park district...shall have power, acting independently or in conjunction with...[any] city, [or] park district...to build, construct, care for, control, supervise, improve, operate and maintain parks, playgrounds, gymnasiums, swimming pools, field houses and other recreational facilities...”.

1.4. RCW 35.61.290 authorizes the City and the TMPD to “enter into an agreement embodying such terms and conditions of any such grant or loan [to provide for the continuous operation, maintenance and/or improvement of metropolitan park district property] as may be mutually agreed upon.”

1.5. The City Council finds that is likely to result in the lowest cost of borrowing and is in the best interests of the City to issue bonds and to loan the proceeds of those bonds to the TMPD to carry out the Pool Improvement Project.

1.6. RCW 35.61.100 provides that the limitation on nonvoter approved general obligation indebtedness is equal to 0.25% of the value of the taxable property in the metropolitan park district, which available debt capacity is currently \$11,509,975.65, based on the 2012 assessed valuation of \$4,603,990,258. The TMPD currently has no nonvoter approved general obligation indebtedness outstanding. The indebtedness created under this Agreement is incurred within the TMPD’s available debt capacity.

1.7. The Tukwila City Council has adopted Ordinance No. \_\_\_\_\_ authorizing the issuance of not to exceed \$1,100,000 Limited Tax General Obligation Bonds, 2012 and the execution of this Agreement to provide for the financing of the Pool Improvement Project.

## **Section 2. Definitions.**

For purposes of this Agreement, the following words shall have the following meanings, unless another meaning is clearly intended. Capitalized terms not defined below shall have the meanings given in the Bond Ordinance.

“*Agreement*” means this Interlocal Agreement for the funding of the Tukwila Pool Improvement Project, entered into by and between the City and TMPD under the authority of RCW 35.61.290 and 67.20.010.

“*Bond Counsel*” means a firm of nationally recognized Bond Counsel selected by the City.

“*Bond Ordinance*” means Ordinance No. \_\_\_\_\_ of the City of Tukwila authorizing issuance of the City’s Limited Tax General Obligation Bonds, 2012 (Pool Improvement Project).

“*Business Day*” means any day that is not a Saturday, Sunday, holiday or other day on which commercial banking institutions in Washington state are authorized or obligated by law or executive order to be closed.

“*City*” means the City of Tukwila, Washington.

“*Code*” means the Internal Revenue Code of 1986, as amended, together with all administrative rulings and regulations promulgated or issued thereunder.

“*Debt Service Payment*” means any payment of principal or interest (or both) with respect to Pool Improvement Project Bonds plus any premium, prepayment penalty, credit enhancement, remarketing or similar fee coming due and payable on any principal or interest payment date and not paid on issuance of the bonds.

“*Gross TMPD Revenues*” means all taxes, fees, charges and other revenues received by TMPD from any source whatsoever.

“*Pool Improvement Project*” or “*Project*” means the Tukwila Pool Improvement Project described in Exhibit A and incorporated by this reference.

“*Pool Improvement Project Bonds*” the City’s Limited Tax General Obligation Bonds, 2012, authorized by the Bond Ordinance.

“*Parties*” means the City and TMPD.

“*Tukwila Metropolitan Park District*” or “*TMPD*” means The Tukwila Metropolitan Park District, a municipal corporation created pursuant to chapter 36.120 RCW and a vote of the people held on August 16, 2011.

“*TMPD Board*” means the governing board of TMPD.

“*TMPD Payment*” means one or more payments made by TMPD under this Agreement to fund the City.

### **Section 3. TMPD Responsibilities.**

3.1. TMPD Payments. TMPD agrees to make TMPD Payments to the City from Gross TMPD Revenues at the times in the amounts set forth in Exhibit B, which is incorporated by this reference. TMPD shall make each TMPD Payment to the City by wire transfer or other electronic transfer on each June 1 and December 1. The City is not required to bill TMPD for these payments. If any payment date is not a Business Day, the payment shall be due and payable on the next preceding Business Day. Prepayments may be made by the TMPD only pursuant to a defeasance plan agreed to in writing by both Parties. If TMPD fails to make any TMPD Payment in a timely manner, its obligation to make that payment shall accrue interest at the rate of investment earnings on the City’s consolidated cash pool until the TMPD Payment and the interest accruing under this subsection are fully paid.

3.2. Pledge of Gross TMPD Revenues. For so long as any Pool Improvement Project Bonds remain outstanding, TMPD irrevocably pledges to levy and collect the taxes and to collect the other revenues included in Gross TMPD Revenues in an amount sufficient, together with other money legally available for this purpose, to make when due all TMPD Payments under this Agreement. TMPD agrees that the City may (but is not required to) rely on this pledge and may offer it as security for Pool Improvement Project Bonds.

3.3. TMPD Covenants. For so long as any Pool Improvement Project Bonds remain outstanding, TMPD will not create or suffer to be created any lien against Gross TMPD Revenues that is prior and superior to the lien created or contemplated in connection with this Agreement. Further, TMPD will not issue indebtedness or incur any obligations payable from Gross TMPD Revenues unless and until it has given due regard to its ability to meet its obligations under this Agreement and all other outstanding obligations. As used in this Subsection 2.3, “due regard” has the same meaning as it is given in the context of RCW 39.46.150.

### **Section 4. City Responsibilities.**

4.1. Application of TMPD Payments. The City agrees to apply all amounts received as TPMPD Payments solely: (1) to pay or reimburse the City for costs of the Pool Improvement Project not expected to be paid with bond proceeds; or (2) to make Debt Service Payments on Pool Improvement Project Bonds, or to refund or defease such bonds (including, without limitation, paying costs of issuance, purchasing securities for the funding of any defeasance escrow and administrative costs associated with a refunding or defeasance, if any). If and to the extent that amounts allocable to TMPD Payments remain in a Pool Improvement Project debt service fund or account after the Pool Improvement Project Bonds are no longer outstanding, such amounts shall be applied to additional costs of the Pool Improvement Project or as otherwise directed in the Bond Ordinance, consistent with applicable law.

4.2. Pool Improvement Project Bonds. The City agrees to issue Pool Improvement Project Bonds to finance the Pool Improvement Project. Timing of any such issuance is at the sole discretion of the City. The City may in its sole discretion issue bonds that refund Pool Improvement Project Bonds. Any such refunding bonds issued by the City under this section shall be treated as “Pool Improvement Project Bonds” for all purposes of this Agreement, and the terms and conditions of this Agreement shall remain in full force and effect.

4.2.1. *Description of Pool Improvement Project Bonds.* Pool Improvement Project Bonds may be issued as general obligation bonds, may be secured (in whole or in part) by the pledge of TMPD in Section 2.2 of this Agreement, and may be combined with any other series of bonds issued by the City. Pool Improvement Project Bonds shall have a final maturity date no more than 20 years after their date of issuance; shall bear interest at the rates and on the basis set forth in the Bond Ordinance; and may be subject to such optional and mandatory redemption provisions and other terms (including but not limited to credit enhancement devices) as the City deems necessary or convenient.

4.2.2. *Application of Bond Proceeds.* If and when it does issue Pool Improvement Project Bonds, the City agrees to apply the proceeds, after payment of costs of issuance, solely to the Pool Improvement Project and related costs.

4.2.3. *Allocation of TMPD Payments.* As described in Section 3.1, the City expects that a portion of the TMPD Payments may be used for Debt Service Payments and a portion may be applied to ongoing costs of the Pool Improvement Project. In light of this, the City may at any time make an allocation indicating what portion of TMPD Payments will be used for Debt Service Payments on that issue, and only that portion of TMPD Payments shall be treated as “pledged funds” within the meaning of the Code. To the extent that TMPD Payment amounts are in excess of the amount necessary to meet the allocated portion of Pool Improvement Project Bond Debt Service Payments, such amounts shall not be considered pledged to the Pool Improvement Project Bonds and may be used for capital costs of the Pool Improvement Project that are not expected to be financed with bond proceeds.

## **Section 5. Tax Exemption; Continuing Disclosure.**

5.1. Tax Exemption. It is the intention of TMPD and the City that interest on any Pool Improvement Project Bonds will be and remain excluded from gross income of the owners of those bonds under federal tax law. To that end, TMPD covenants that it has not taken or permitted to be taken and will not take or permit to be taken any action that will cause the interest on the Pool Improvement Project Bonds to become included in gross income for federal tax purposes pursuant to the Code or to become “arbitrage bonds” within the meaning of Section 148 of the Code. TMPD acknowledges and agrees that Bond Counsel to the City will rely upon the facts, estimates and circumstances in existence on the issue date and the reasonable expectations of TMPD as to future events respecting TMPD Payments to enable them to conclude that the Pool Improvement Project Bonds are governmental obligations the interest on which is excluded from gross income for federal income tax purposes under Section 103 of the Code. By virtue of this covenant to comply with future laws or regulations, TMPD does not intend nor shall either be deemed to waive any rights or defenses that it may have to contest the application of such laws or regulations to the Pool Improvement Project on the grounds that such

application would constitute a prohibited impairment of contract or on any other applicable grounds. Nevertheless, while contesting the application of any such laws or regulations, TPMPD shall take such actions deemed necessary in the opinion of Bond Counsel to maintain the exclusion from gross income of interest on the Pool Improvement Project Bonds. TMPD's responsibilities under this section shall be limited to actions within its control. None of the covenants and agreements herein contained shall require TMPD to enter an appearance or intervene in any administrative, legislative or judicial proceeding in connection with any changes in applicable laws, rules or regulations or in connection with any decisions of any court or administrative agency or other governmental body affecting the taxation of interest on the Pool Improvement Project Bonds.

5.2. Official Statement. The Parties acknowledge that the City may participate in preparing an official statement or other offering document in connection with the offer and sale of the Pool Improvement Project Bonds. To the extent that the TMPD Payments are pledged to repayment of the Bonds, TMPD agrees to cooperate with the City in providing such information as may be necessary for inclusion in the document and further agrees to certify that the information pertaining to TMPD and presented in such document is fair and accurate.

5.3. Continuing Disclosure. To the extent that Rule 15c2-12 (the "Rule") of the United States Securities and Exchange Commission (the "SEC") requires TMPD, as an "obligated person," to provide a written undertaking (the "Undertaking") for the benefit of the holders of the Pool Improvement Project Bonds, TMPD agrees to execute such a written Undertaking prior to the issue date of the Bonds. For purposes of this Undertaking, the term "holders of the bonds" shall have the meaning intended for such term under the Rule.

## **Section 6. Miscellaneous.**

6.1. Term of Agreement. This Agreement shall take effect as of the date first written above and shall expire when all TMPD Payments due under the TMPD Payment schedule in Exhibit B have been paid in full, including all interest due on delinquent payments.

Binding Effect; Assignment; Third Party Beneficiaries. Neither Party may assign its interest or obligation under this Agreement without the prior written consent of the other Party, except that the City may at its sole option pledge its interest in the TMPD Payments for the benefit of owners of Pool Improvement Project Bonds as provided in Section 2.2. This Agreement shall inure to the benefit of and shall bind the respective assignees. There are no other third party beneficiaries of this Agreement, and its terms are not intended to establish nor to create any rights in any persons or entities other than the City, TPMPD, and the respective successors and assigns of each.

6.3. Amendments; Reliance. No amendment of any provision of this Agreement is valid unless set forth in a written amendment signed by the Parties. The Parties acknowledge that the City will issue the Bonds in reliance on this Agreement. If Pool Improvement Project Bonds are rated by a rating agency, then no amendment shall be permitted unless written confirmation from each rating agency has been obtained to the effect that the proposed amendment will not result in a reduction or withdrawal of the rating on the Pool Improvement Project Bonds. If the Pool Improvement Project Bonds are not rated by a rating agency, then no

amendment will be permitted unless, in the opinion of Bond Counsel to the City, such amendment will not adversely affect the owners of the Pool Improvement Project Bonds.

6.4. Waiver. No provision of this Agreement may be waived except if expressly given in writing, and no implied or oral waiver may be used to materially impair the force and effect of any substantive provision of this Agreement. Any waiver of a Party's right with respect to a default under this Agreement, or with respect to any other matter arising in connection therewith, shall not be deemed a waiver with respect to any subsequent default or matter.

6.5. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

6.6. Applicable Law and Venue. This Agreement shall be governed by the laws of the State of Washington. The venue for any legal action arising from a dispute under this Agreement is the Superior Court for King County.

6.7. Entire Agreement. This Agreement constitutes the entire and exclusive agreement between the Parties relating to the specific matters covered in this Agreement. All prior or contemporaneous oral or written agreements, understandings, representations or practices relative to the foregoing are superseded, revoked and rendered ineffective for any purpose. This Agreement may be altered, amended or revoked only as set forth in Section 5.3. No oral agreement or implied covenant may be held to vary the terms of this Agreement, any statute, law or custom to the contrary notwithstanding.

6.8. Time of the Essence. Time and all terms and conditions shall be of the essence of this Agreement.

6.9. Notices. All notices required to be in writing shall be given using the notice addresses in this section. A Party may designate a different notice address by providing written notice to the other Party.

If to TMPD:       MPD Board President  
                          c/o Rick Still, Parks and Recreation Director  
                          12424 42<sup>nd</sup> Avenue South  
                          Tukwila, WA 98168  
                          Telephone: 206-767-2344  
                          Email: Rick.Still@TukwilaWA.gov

If to the City:     The City of Tukwila  
                          Department of Finance  
                          6200 Southcenter Blvd.  
                          Tukwila, WA 98188  
                          Telephone: 206-433-1835  
                          Email: Peggy.McCarthy@TukwilaWA.gov



6.11. Execution in Counterparts. This Agreement may be executed in one or more counterparts. The Parties agree to execute a release or other appropriate instruments as shall be necessary to certify compliance with the terms of this Agreement upon full and complete satisfaction of the terms of this Agreement.

6.11 Indemnification of the City. The Park District shall indemnify and hold City and its agents, employees, and/or officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against City arising out of, in connection with, or incident to the making of the Loan that is the subject of this Agreement and/or Park District's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of City, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of Park District; and provided further, that nothing herein shall require Park District to hold harmless or defend City, its agents, employees and/or officers from any claims arising from the sole negligence of City, its agents, employees, and/or officers. No liability shall attach to City by reason of entering into this Agreement except as expressly provided herein.

6.12 Interlocal Cooperation Act Provisions. It is not intended that a separate legal entity be established to conduct this cooperative undertaking. No special budget or funds are anticipated, nor shall any be created. The parties are each responsible for their own finances in connection with this Agreement, and nothing in this Agreement shall be deemed or construed otherwise. The parties do not intend to acquire, hold, or dispose of any real or personal property pursuant to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officers and representatives as of the date indicated above.

THE CITY OF TUKWILA

TUKWILA METROPOLITAN PARK DISTRICT

By: \_\_\_\_\_  
Jim Haggerton, Mayor

By: \_\_\_\_\_  
Verna Seal, Board President

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
Shelley M. Kerslake,  
City Attorney

\_\_\_\_\_  
Lisa M. Marshall,  
Commission Attorney

## Exhibit A

### **Project Description:**

“*Project*” or “*Pool Improvement Project*” means certain improvements, repairs and upgrades to the pool and related facilities owned by the Tukwila Metropolitan Park District, and other capital purposes as deemed necessary and advisable by the MPD Board of Commissioners. Incidental costs incurred in connection with carrying out and accomplishing the Project, consistent with RCW 39.46.070, shall be included as costs of the Project. The term “Project” includes acquisition, construction and installation of all necessary furniture, equipment, apparatus, accessories, fixtures and appurtenances.

**Exhibit B**

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**TMPD Payment Schedule**

<b>Due Date</b>	<b>Principal</b>	<b>Interest</b>	<b>Total</b>
6/1/2013	-		
12/1/2013			
6/1/2014	-		
12/1/2014			
6/1/2015	-		
12/1/2015			
6/1/2016	-		
12/1/2016			
6/1/2017	-		
12/1/2017			
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6/1/2024	-		
12/1/2024			
6/1/2025	-		
12/1/2025			
6/1/2026	-		
12/1/2026			
6/1/2027	-		
12/1/2027			
<b>TOTAL</b>	<b>1,100,000.00</b>		