

INFORMATIONAL MEMORANDUM

Tukwila Metropolitan Park District

TO: Tukwila Pool MPD Board

FROM: Rick Still, Parks and Recreation Director 

BY: Vicky Carlsen, Deputy Finance Director

DATE: December 11, 2013

SUBJECT: Memorandum of Understanding (MOU) to Interlocal Agreement for loan and repayment between the City of Tukwila and the Tukwila Pool Metropolitan Park District (MPD)

ISSUE

Approve the MOU to the interlocal agreement for the loan and repayment between the City of Tukwila and the Tukwila Pool Metropolitan Park District

FINANCIAL IMPACT

By loaning the funds to the MPD later than outlined in the Interlocal Agreement, the total interest owed to the City is less than what would have been owed if the original schedule had been followed.

DISCUSSION

An Interlocal Agreement was entered into on October 20, 2011 for the City of Tukwila to loan funds to the MPD as interim financing until the MPD general tax levy revenue becomes available. The agreement called for funds to be loaned according to the following schedule:

- a. October 15, 2011 - \$375,000
- b. April 15, 2012 - \$375,000
- c. October 15, 2012 - \$350,000

It was later determined that, while the MPD would require all funds in the schedule, the funds would not be needed as early as scheduled. The funds were loaned on the following schedule:

- a. October 15, 2011 - \$191,294.00
- b. April 15, 2015 - \$225,000.00
- c. October 15, 2012 - \$433,706.00
- d. January 15, 2013 - \$250,000.00

The MOU will clarify the terms of the agreement and the loan and repayment schedule.

Section 1 of the MOU modifies the loan schedule from a pre-determined schedule to an as-needed schedule. By modifying the loan schedule, the MPD was able to reduce the total interest owed to the City by approximately \$6,500. The City also benefited from the adjusted schedule by having funds available longer for cash flow purposes.

Section 2 of the MOU has two changes. The first is to remove the sentence that refers to the City providing the MPD with an invoice. In an effort to streamline the process, an amortization schedule

has been prepared and is used as backup for the required payment. This type of documentation is acceptable to be used for payment purposes.

The second change is to change the repayment schedule from semi-annual to monthly. This change will save the MPD an additional \$4,500 in interest over the life of the loan.

The City has a process in place whereby the Mayor may sign MOUs that do not have a dollar value or cost to the City. However, at this time, the MPD does not have a similar process in place for signing no cost agreements. To date, all agreements have come before the full Board for approval. Therefore, this MOU will not come before the City Council to authorize the Mayor's signature, but will come before the MPD Board of Commissioners for signature authorization.

RECOMMENDATION

The Board is being asked to authorize the President and Clerk of the Board to sign the Memorandum of Understanding at the December 16, 2013 Board of Commissioners meeting.

ATTACHMENTS

- Memorandum of Understanding to Interlocal Agreement for Loan and Repayment between the City of Tukwila and the Tukwila Pool Metropolitan Park District
- Copy of City of Tukwila – Tukwila Metropolitan Park District Interlocal Agreement for Loan and Repayment

**MEMORANDUM OF UNDERSTANDING TO INTERLOCAL AGREEMENT FOR LOAN AND REPAYMENT
BETWEEN THE CITY OF TUKWILA AND THE TUKWILA POOL METROPOLITAN PARK DISTRICT**

This Memorandum of Understanding is made and between the City of Tukwila ("City") and the Tukwila Pool Metropolitan Park District ("MPD"), both of whom are Washington municipal corporations, to clarify the Interlocal Agreement for Loan and Repayment.

WHEREAS, the City and the MPD have a fully executed interlocal agreement regarding the loaning of funds by the City to the MPD on a pre-determined schedule; and

WHEREAS, the MPD wishes to borrow funds on an "as needed" basis thereby reducing the total amount of interest cost incurred; and

WHEREAS, the City acknowledges that it would be beneficial to both the City and the MPD to lend funds only as needed by the MPD,

NOW, THEREFORE, BE IT UNDERSTOOD THAT THE CITY AND THE MPD AGREE TO THE FOLLOWING:

SECTION 1: Loan Amount and Disbursement. The City agrees to lend sufficient funds from its General Fund to the MPD Fund and agrees to disburse funds in a total principal sum not to exceed \$1,100,000.00 (the "Loan") which principal is subject to interest at a rate of two percent per year. The following loan amounts have been remitted to the MPD:

- a. October 15, 2011 - \$191,294.00
- b. April 15, 2012 - \$225,000.00
- c. October 15, 2012 - \$433,706.00
- d. January 15, 2013 - \$250,000.00

SECTION 2: Loan Repayment Terms and Schedule. The MPD agrees to assume and accept the financial obligation to repay the Loan in the maximum amount of \$1,100,000.00, plus interest thereon at the rate of two percent per year, for a ten-year period. The Park District obligation hereunder constitutes a non-voted general obligation of the Park District to which its full faith, credit and resources are pledged.

This Loan will be repaid in monthly payments to the City beginning in 2013. The first payment will be due May 15, 2013 and will be due every month on the 15th of each month, thereafter. Should the MPD desire to pre-pay any of the loan amount, pre-payment shall include accrued interest, through the date of payment.

EXECUTED this _____ day of _____, 2013.

CITY OF TUKWILA

TUKWILA POOL METROPOLITAN PARK DISTRICT

By: _____
Jim Haggerton, Mayor

By: _____
Verna Seal, Board President

Dated: _____

Dated: _____

Attest:

Attest:

Christy O'Flaherty, MMC, City Clerk

De'Sean Quinn, Clerk of the Board

Approved as to Form:

Approved as to Form:

Shelley M. Kerslake, City Attorney

Snure Law Office, PSC, Attorney for TPMPD

**CITY OF TUKWILA – TUKWILA METROPOLITAN PARK DISTRICT
INTERLOCAL AGREEMENT FOR
LOAN AND REPAYMENT**

THIS INTERLOCAL AGREEMENT made and entered into, pursuant to the Interlocal Cooperation Act, Chapter 39.34 of the Revised Code of Washington, on the 20th day of October, 2011, by and between the CITY OF TUKWILA, a municipal corporation of the State of Washington (hereinafter referred to as "City"), and the TUKWILA METROPOLITAN PARK DISTRICT, a municipal corporation of the State of Washington (hereinafter referred to as "Park District").

WITNESSETH:

WHEREAS, by Resolution No. 1738, the City Council of the City of Tukwila, Washington asked the voters to create a metropolitan park district whose boundaries would be coextensive with the boundaries of the City of Tukwila, including the authority to levy a general tax on property not to exceed 15 cents per thousand dollars of assessed valuation each year as statutorily provided; and

WHEREAS, on August 16, 2011, the voters of Tukwila approved the formation of a metropolitan park district as required and now known as the Tukwila Metropolitan Park District ("Park District"); and

WHEREAS, the general taxes levied by the Park District pursuant to RCW 35.61.210 will not be collected and available to fund Park District operations until May 1, 2013, and a loan from the City of Tukwila is needed during the interim period to fund Park District operations and shall be repaid by the Park District using its general tax revenues once those become available; and

WHEREAS, by Resolution No. 1746, the City has declared its intent to enter into an interlocal agreement with the Park District to evidence the City's commitment to loan funds to the Park District as interim financing until the Park District's general tax revenues become available; and

WHEREAS, in consideration for the City's commitment to loan funds as interim financing, upon the terms and conditions set forth herein, the Park District has declared its intent to enter into an interlocal agreement with the City, by Resolution No. 5, to repay the City pursuant to the financial covenants set forth herein;

NOW THEREFORE in consideration of the mutual covenants hereinafter contained, the parties hereto covenant and agree as follows:

1. LOAN AMOUNT AND DISBURSEMENT

The City agrees to lend sufficient funds from its General Fund to the Tukwila Metropolitan Park District Fund and agrees to disburse funds in a total principal sum not to exceed \$1,100,000.00 (the "Loan"), which principal is subject to interest at the rate of two percent per year, according to the following schedule:

- a. October 15, 2011 - \$375,000.00
- b. April 15, 2012 - \$375,000.00
- c. October 15, 2012 - \$350,000.00

Should the Metropolitan Park District find that it is not in need of some or all of the principal amounts identified above, the Park District will notify the City not less than 15 (fifteen) days prior to the scheduled loan disbursement date.

2. LOAN REPAYMENT TERMS AND SCHEDULE

The Park District agrees to assume and accept the financial obligation to repay the Loan in the maximum amount of \$1,100,000.00, plus interest thereon at the rate of two percent per year, within a ten-year period. The Park District obligation hereunder constitutes a non-voted general obligation of the Park District to which its full faith, credit and resources are pledged.

This Loan will be repaid in semi-annual payments to the City beginning in 2013. The first payment will be due May 15, 2013 and will be due every November 15th and May 15, thereafter. The City will invoice the Park District for the amount owing for the relevant time period. Should the Park District desire to pre-pay any of the loan amount, pre-payment shall include accrued interest, through the date of payment.

3. EVENTS OF DEFAULT AND REMEDIES

3.1 Events of Default. Each of the following shall be a "Loan Default":

- a. Monetary Defaults. Any failure by the Park District to make any required monetary payments when due to the City pursuant to Paragraph 2 of this Agreement. If an event which would constitute a Monetary Default shall occur, the City shall provide prompt telephone notice confirmed in writing (which may be by facsimile or electronic transmission) to the Park District Executive Director, and demand a cure thereof (provided, that failure by the City to send such written notice shall not constitute waiver of or prevent the occurrence of a Loan Default), and if such event is not cured within fifteen days of the scheduled payment date, then such event shall constitute a Loan Default and the City may, in its sole discretion, proceed with its remedies under Paragraph 3.2 of this Agreement.

b. Nonmonetary Defaults. Any failure on the part of the Park District to perform or observe the duties, provisions or obligations required of it pursuant to this Agreement, other than as set forth in Paragraph 3.1(a) above, if such failure shall have continued for a period of 60 days after written notice thereof has been delivered to the Park District by the City.

3.2 Remedies. Upon occurrence of any Loan Default under this Agreement, the City may bring any legal action or proceeding against the Park District to protect and enforce its rights in equity or at law, either in mandamus or for the specific performance of any covenant or agreement contained in this Agreement, or for the enforcement of any other appropriate legal or equitable remedy, as the City, being advised by counsel, may deem most effectual to protect and enforce any of its concurrent or reserved rights or interests hereunder with respect to: (1) the payment of principal, interest, fees or amounts due; (2) indemnifications and reimbursements due to the City by the Park District; and (3) receipt of reports and notices.

4. RECORDS INSPECTION AND AUDIT

All funds advanced and repaid shall be subject to adjustment for any amounts found upon audit or otherwise to have been improperly advanced or reimbursed, and all records and books of accounts pertaining to the Loan provided under this Agreement shall be subject to inspection and audit by either party for a period of up to three (3) years from the final payment by the Park District for reimbursement of the Loan provided by the City.

5. ADMINISTRATION OF AGREEMENT

This Agreement shall be administered by Peggy McCarthy, Interim Finance Director or designee on behalf of City, and by Kimberly Matej, Interim Executive Director, or designee on behalf of the Park District. Any written notices required by the terms of this Agreement shall be served on or mailed to the following addresses:

CITY OF TUKWILA
Peggy McCarthy
Interim Finance Director
Tukwila, WA 98188
Phone: 206-433-1839

PARK DISTRICT
Kimberly Matej
Interim Executive Director
Tukwila, WA 98188
Phone: 206-433-1834

6. NOTICES

All notices or communications permitted or required to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person or deposited in the United States mail, postage prepaid, for mailing by certified mail, return receipt requested, and addressed, if to a party of this Agreement, to the address for the party set forth above.

Either party may change its address by giving notice in writing, stating its new address to the other party, pursuant to the procedure set forth above.

7. 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.

8. WAIVER OF SUBROGATION

City and Park District hereby mutually release each other from liability and waive all right of recovery against each other for any loss caused by fire or other perils which can be insured against under fire insurance contracts including any extended coverage endorsements thereto which are customarily available from time to time in the State of Washington, provided, that this paragraph shall be inapplicable to the extent that it would have the effect of invalidating any insurance coverage of City or Park District.

9. COMPLIANCE WITH REGULATIONS AND LAWS

The parties shall comply with all applicable rules and regulations pertaining to them in connection with the matters covered herein.

10. ASSIGNMENT

The parties shall not assign this Agreement or any interest, obligation or duty therein without the express written consent of the other party.

11. ATTORNEYS' FEES

If a Loan Default occurs and if the City or Park District should employ attorneys or incur expenses for the enforcement of any obligation or agreement of the City or Park District contained herein, the non-prevailing party on demand will pay to the prevailing party the reasonable fees of such attorneys of the prevailing party and the reasonable costs so incurred, including, without limitation, reasonable fees and costs of court appeals.

12. MISCELLANEOUS

a. All of the covenants, conditions and agreements in this Agreement shall extend to and bind the legal successors and assigns of the parties hereto.

b. This Agreement shall be deemed to be made and construed in accordance with the laws of the State of Washington. Jurisdiction and venue for any action arising out of this Agreement shall be in King County, Washington.

c. The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.

d. Unless otherwise specifically provided herein, no separate legal entity is created hereby, as each of the parties is contracting in its capacity as a municipal corporation of the State of Washington. The identity of the parties hereto is as set forth hereinabove.

e. The performances of the duties of the parties provided hereby shall be done in accordance with standard operating procedures and customary practices of the parties.

f. No provision of this Agreement shall relieve either party of its public agency obligations and or responsibilities imposed by law.

g. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable by a final decision of any court having jurisdiction on the matter, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall

not be affected thereby and shall continue in full force and effect, unless such court determines that such invalidity or unenforceability materially interferes with or defeats the purposes hereof, at which time either party shall have the right to terminate the Agreement.

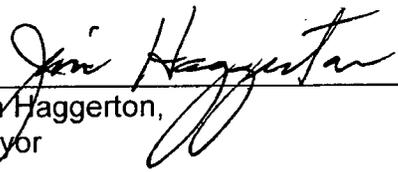
h. This Agreement constitutes the entire agreement between the parties. There are no terms, obligations, covenants or conditions other than those contained herein. No modifications or amendments of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both parties.

i. Copies of this Agreement shall be filed with the King County Auditor's Office and the respective Clerks of the parties hereto.

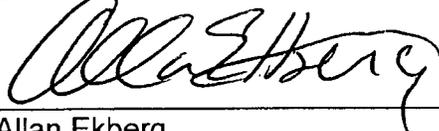
IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF TUKWILA

TUKWILA METROPOLITAN PARK DISTRICT



Jim Haggerton,
Mayor



Allan Ekberg
President of the Board of Commissioners

Attest:


Christy O'Flaherty, CMC
City Clerk

Attest:


Verna Seal
Clerk of the Board

Approved as to form:

Approved as to form:



Shelley M. Kerlake,
City Attorney



Lisa M. Marshall,
Commission Attorney