



INFORMATIONAL MEMORANDUM

TO: TPMPD Board of Commissioners

FROM: David Cline, City Administrator, City of Tukwila

DATE: March 24, 2014

RE: Amendments to Interlocal Agreement between TPMPD and City of Tukwila

Attached please find the City of Tukwila's initial comments on and revisions to the interlocal agreement for support services between the City and the TPMPD. The City looks forward to working with the TPMPD to negotiate an agreement that is satisfactory to both parties.

Please feel free to contact me with any questions or concerns. Thank you.

**INTERLOCAL AGREEMENT
FOR SUPPORT SERVICES
BETWEEN THE CITY OF TUKWILA AND
THE TUKWILA POOL METROPOLITAN PARK DISTRICT**

In accordance with the Interlocal Cooperation Act (RCW 39.34), the City of Tukwila (“Tukwila”) and the Tukwila Pool Metropolitan Park District (“TPMPD”), both of whom are Washington municipal corporations, hereby enter into the following agreement:

I. RECITALS

Tukwila and TPMPD, through their respective legislative bodies, have declared their intent to create a relationship whereby TPMPD contracts for support services from Tukwila; and

Tukwila and TPMPD recognize that the cost savings from shared support services greatly outweighs the increased facility and administrative expenses in creating and maintaining separate facilities and accounting practices associated with the operation of the City of Tukwila Pool and related services;

Now, Therefore, Tukwila agrees to provide, and TPMPD agrees to pay for, support services to facilitate the operation of TPMPD and the City of Tukwila Pool:

II. AGREEMENT

1. Term of Agreement, Termination and Renewal.

1.1 Term. This Agreement shall be valid from the Effective Date set forth in Section 4.1 of this Agreement until ~~January 1, 2016~~ December 31, 2015 unless terminated by consent of the parties or by one of the termination methods set forth below, etc.

Comment [RBT1]: Probably better for accounting and other purposes to have it end at the end of calendar year, rather than going one day into a new year.

Comment [JPC2]: Sounds good

1.1.1 Termination for non-payment. If the TPMPD has not made a monthly payment within ten (10) days after its due date of net 30, Tukwila shall send, by registered mail and email, written notice to the TPMPD that such payment is overdue. If payment is not made within five (5) business days after said notice has been received, Tukwila may terminate this Agreement by providing written notice to the TPMPD, it being understood that nothing in this shall limit or impair Tukwila’s right to any remedy otherwise available under applicable law.

Comment [RBT3]: This would effectively allow the TPMPD to terminate at any time by simply not paying. This is acceptable, but the City should have the same right. Accordingly, I added the termination without cause clause below.

1.1.2 Termination for failure to carry insurance. Either party may terminate this Agreement immediately in the event the other party fails to maintain the insurance coverage required under Section 3.1.

Comment [JPC4]: See note below

1.1.21.1.3 Termination Without Cause. Either party may terminate this agreement at any time with ninety (90) days written notice to the other Party.

Comment [RBT5]: It seems prudent to allow either party to terminate this agreement in case this partnership no longer works out. This will also prevent any arguments over what constitutes a "material breach"

Comment [JPC6]: We could do this with a longer lead time – 120-180 days perhaps.

Termination for material breach. In addition to the termination rights established under Sections 1.1.1 and 1.1.2, either party may terminate this Agreement in the event of a material breach of this Agreement by the other party; provided, however, that the non-breaching party shall provide the breaching party with written notice which sets forth the alleged material breach(es). If the breaching party fails to cure such alleged material breach(es) during the ninety (90) days following receipt of the notice from the non-breaching party (the "Cure period"), the non-breaching party may terminate this Agreement upon the expiration of the Cure Period. The right to terminate this Agreement set forth in this paragraph shall be in addition to the other rights and remedies available to the parties under applicable law.

1.2 Renewal. This Agreement may be renewed only by written agreement of both Parties.

2. Scope of Work.

2.1 Pool Operations Scope of Work. Duties shall be performed by the incumbent identified by job title(s), however the City Administrator may delegate responsibilities based on staff availability and organization needs. Tukwila shall perform the duties described in "Exhibit 1" for the TPMPD.

2.2 Pool Staff and Management. The cost of pool staff and management salaries and benefits are not included in this agreement. The cost of pool staff and management salaries and benefits shall be billed separately to the TPMPD. The positions of Aquatics Program Coordinator, Aquatics Program Specialist, and Extra Labor comprise pool staff and management.

2.3 Support Services Scope of Work. Duties shall be performed primarily by the incumbent identified by job title, however, the City Administrator may delegate responsibilities based on staff availability and organizational needs. Tukwila shall perform duties described in "Exhibit 2" as needed and requested by the Board President or his or her designee.

2.4 Support Services Cost Basis. TPMPD shall pay Tukwila for providing support services based on the hourly wages and benefits of City staff and their time spent providing support services, plus 10% for overhead expenses. Support Services are estimated to cost approximately \$6,600 per month. ~~[Deleted text: however, nothing in this agreement limits Tukwila's ability to invoice more than \$6,600 per month.]~~

2.5 ~~Cost Controls. Tukwila is authorized to invoice on a cost for service basis up to the annual maximum amount of \$80,000. Costs for support services exceeding that annual maximum are to be absorbed by Tukwila unless specific written approval is obtained in advance from the Executive Director and Board President to exceed the maximum amount. Tukwila shall notify the TPMPD as soon as it determines that the annual maximum amount may be exceeded and shall provide TPMPD with various options for reducing the costs. TPMPD will actively seek and implement cost saving measures to assist in maintaining costs below the annual maximum.~~

Comment [RBT7]: The City will not be able to agree to this. It is not fair for the City to absorb these costs. Any services rendered must be paid for.

2.6 Monthly Invoice. Tukwila shall provide to TPMPD a monthly invoice for support services provided to TPMPD outlining the nature of the services provided, the hours of service provided, the hourly rate applicable to such services and the expenses incurred no later than 15 business days after the end of each month. Payment shall be due from TPMPD 30 days from the date of invoice and made payable to the City of Tukwila.

Comment [JPC8]: We agree that it would be preferable for the City to avoid this situation. This language provides the City with multiple safeguards to ensure that it doesn't happen. By eliminating it completely, the Board would be writing a blank check, which is fiscally irresponsible.

2.7 Employees. All City employees who provide the TPMPD the services called for in this Agreement shall be employees of the City, and not employees of the TPMPD. Except as provided in this Agreement, the employees of the City who are performing the services called for in this Agreement shall not be entitled to any benefit from the TPMPD. The City shall, at all times, be solely responsible for the conduct of its employees in performing the services called for in this Agreement. The City shall be solely responsible for all compensation, benefits and insurance for its employees. The TPMPD agrees to adopt and enforce the City's policies and procedures related to employee safety, pool behavior and workplace harassment.

2.8 Records. All records relating to the provision of the services called for in this Agreement shall be considered records of the TPMPD, and shall be retained in accordance with the records retention requirements of the TPMPD; provided, the City may retain copies of any records that it must retain to comply with its own retention requirements or other applicable laws.

3. Indemnification and Hold Harmless. Each party agrees to defend, indemnify, and hold harmless the other party and each of its employees, officials, agents, and volunteers from any and all losses, claims, liabilities, lawsuits, or legal judgments arising out of any negligent or willfully tortious actions or inactions by the performing party or any of its employees, officials, agents, or volunteers, while acting within the scope of the duties required by this Agreement. Each party shall be responsible for its own legal costs and attorneys' fees. This provision shall survive the expiration of this Agreement. This provision shall also survive and remain in effect in the event that a court or other entity with jurisdiction determines that this Agreement is not enforceable. It is further specifically and expressly understood that the indemnification provided herein constitutes each party's waiver of immunity under industrial insurance, Title 51 RCW, solely to

carry out the purposes of this indemnification clause. The parties further acknowledge that they have mutually negotiated this waiver.

3.1 Insurance. Each party shall carry and maintain, for the duration of this Agreement property and liability insurance coverage for all operations, facilities, equipment, and personnel, including liability, at not less than the amount and coverage's as existing on the date of this Agreement in a form and with a company acceptable to the other party.

4. Accountability and Reporting.

4.1 Annual Operations Plan, (also known as the "Work Plan"). Tukwila, working in conjunction with the Executive Director, shall provide the TPMPD with an Annual Operations Plan for the coming year on or before November 15th of each year. The Work Plan shall be subject to the approval of the TPMPD, within 45 days of submittal, which approval shall not be unreasonably withheld. If the TPMPD does not approve the Work Plan, it shall specify in detail a reasonable basis for its disapproval. If the TPMPD fails to provide its approval or a reasonable basis for disapproval within the foregoing 45-day period, the Work Plan as submitted by Tukwila shall be deemed approved. In the event of dispute or disagreement regarding the adoption of or compliance with the Work Plan, the parties shall resolve such dispute pursuant to the Dispute Resolution provisions in Paragraph 6. The Work Plan shall include, at a minimum, the following elements:

Comment [JPC9]: I believe this addresses the note below. It acknowledges that the Work Plan would be developed cooperatively between policy & operations.

4.1.1 Proposed pool hours, programs, partnerships, and user fees.

4.1.2 Proposed routine maintenance plan and identification of non-routine maintenance for the year.

~~4.1.3 Proposed usage and customer satisfaction goals, and a system for collecting and measuring data and progress toward said goals.~~

Comment [RBT10]: This is more policy than operations. It would be more appropriate for TPMPD staff to do this.

4.1.3 Benchmarks for staff development and other efforts that contribute to overall swimmer safety and customer satisfaction.

4.1.4 Proposed annual operating budget including all operational expenses and expected revenue (not to include capital expenses or TPMPD administrative costs).

4.2 Financial Reporting. Tukwila shall provide ~~monthly~~ quarterly financial reports to the TPMPD. The monthly reports shall provide all income and expenses, including staffing and support services, separating operational expenses from capital expenses and TPMPD administrative costs. The reporting format shall be ~~consistent with cash basis accounting and be~~ submitted to the TPMPD Board in time to be included in the distribution for the monthly public meeting.

Comment [RBT11]: Reporting like this is usually done quarterly. Additionally, this will be time consuming and will drive up the TPMPD's cost.

Comment [JPC12]: The City is already providing monthly financial reports

Comment [RBT13]: I don't believe the City uses cash basis accounting; will need to check.

Comment [JPC14]: That's fine

4.3 Other Reporting. Tukwila shall provide the TPMPD with Monthly reports including, but not limited to, progress toward goals outlined in the Work Plan. These reports are due to the Executive Director one week (seven days) prior to the monthly TPMPD Board of Commissioner's meetings.

4.4 Performance Audits. The TPMPD may conduct Performance Audits at such time as TPMPD determines a Performance Audit is necessary. Performance Audits will include, but are not limited to, review of Tukwila's performance against Work Plan benchmarks, budget, timelines of current and future projects and other deliverables as presented to the Executive Director and outlined in the annual Work Plan.

5. Policies and Procedures. The TPMPD agrees to adopt and enforce all Tukwila policies and procedures relating to the operation of the pool. However, the TPMPD reserves the right to adopt policies and procedures that may relate to pool operations, subject to approval by Tukwila, such approval not being unreasonably withheld. TPMPD policies may not relax requirements below current local, state or federal standards. TPMPD policies shall supersede all previous policies once adopted.

Comment [RBT15]: The City's concern is TPMPD policies that may affect how the City provides services.

Comment [JPC16]: If we adopt this addition, it should go both ways. TPMPD would have similar approval oversight for the City's policies and procedures relating to the operations of the pool.

6. Dispute Resolution.

6.1 If the parties are unable to resolve a dispute regarding this Agreement through negotiation, either party may demand mediation through a process to be mutually agreed to in good faith between the parties within 30 days. The parties shall share equally the costs of mediation and each party shall be responsible for their own costs in preparation and participation in the mediation, including expert witness fees and reasonable attorney's fees.

Comment [RBT17]: I think it would be preferable to have an internal dispute resolution process that then escalates to mediation. If there is an issue that cannot be resolved in this manner, the parties may terminate the agreement or go to court.

~~6.2 If a mediation process cannot be agreed upon or if the mediation fails to resolve the dispute then, within 30 calendar days, either party may submit the dispute to arbitration according to the procedures of the Superior Court Rules for Mandatory Arbitration, including the Local Mandatory Arbitration Rules of the King County Superior Court, King County, Washington, as amended, unless the parties agree in writing to an alternative dispute resolution process. The arbitration shall be before a disinterested arbitrator selected pursuant to the Mandatory Arbitration Rules with both parties sharing equally in the cost of the arbitrator. The location of the arbitration shall be mutually agreed or established by the assigned Arbitrator, and the laws of Washington will govern its proceedings. Each party shall be responsible for its own costs in preparing for and participating in the arbitration, including expert witness fees and reasonable attorney's fees.~~

Comment [JPC18]: If we eliminate arbitration, unresolved issues would end up in the Council/Board Members lap or court. Are the Commissioners comfortable with this?

~~6.3 Following the arbitrator's issuance of a ruling/award, either party shall have 30 calendar days from the date of the ruling/award to file and serve a demand for a bench trial de novo in the King County Superior Court. The court shall determine all questions of law and fact without empanelling a jury for any purpose. If the party demanding the trial de novo does not improve its position from the arbitrator's ruling/award following a final judgment, that party shall pay all costs, expenses and~~

~~attorney fees to the other party, including all costs, attorney fees and expenses associated with any appeals.~~

~~6.4 Unless otherwise agreed in writing, this dispute resolution process shall be the sole, exclusive and final remedy to or for either party for any dispute regarding this Agreement, and its interpretation, application or breach, regardless of whether the dispute is based in contract, tort, any violation of federal law, state statute or local ordinance or for any breach of administrative rule or regulation and regardless of the amount or type of relief demanded.~~

7. General Provisions.

7.1 Effective Date. This Agreement shall be effective upon ratification by each Party's governing body and execution by TPMPD's Board President and the Mayor of Tukwila.

7.2 Amendment. This Agreement may be amended only upon the consent of both Parties. Any amendments shall be in writing and shall be ratified and executed by the Parties in the same manner in which this Agreement was originally adopted.

7.3 Waiver. The waiver by any party of any breach of any term, covenant, or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of the same term, covenant, or condition of this Agreement.

7.4 Severability. If any provision of this Agreement shall be held invalid, the remainder of the Agreement shall not be affected thereby.

7.5 Entire Agreement. This Agreement represents the entire understanding of the Parties and supersedes any oral representations that are inconsistent with or modify its terms and conditions.

7.6 Counterparts. This Agreement shall be effective whether signed by all Parties on the same document or signed in counterparts.

7.7 Notices. Any notice to be provided under the terms of this Agreement, shall be delivered by certified mail, return receipt requested, or by personal service to the following:

For Tukwila:

For TPMPD:

City Clerk
City of Tukwila
6200 Southcenter Blvd.
Tukwila, WA 98188

President
TPMPD
6200 Southcenter Blvd.
Tukwila, WA 98188

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

CITY OF TUKWILA

TUKWILA POOL METROPOLITAN
PARK DISTRICT

By: _____
Jim Haggerton, Mayor

By: _____
Title: Board President

Dated: _____

Dated: _____

Attest:

Attest:

Christy O'Flaherty, City Clerk

Title: Clerk of the Board

Approved as to Form:

Approved as to Form:

Shelley M. Kerslake, City Attorney

Brian Snure, Attorney for TPMPD

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