

INFORMATIONAL MEMORANDUM

Tukwila Pool Metropolitan Park District

TO: Tukwila Pool MPD Board

FROM: Christy O'Flaherty, City of Tukwila Clerk

DATE: March 26, 2014

SUBJECT: **Facilities Use Agreement between City and TPMPD**

ISSUE

The City of Tukwila is requesting that the TPMPD approve and sign a Facilities Use Agreement

FINANCIAL IMPACT

None

BACKGROUND

In consideration for allowing the TPMPD to use the Council Chambers for the monthly meetings and the Hazelnut Conference Room for Committee Meetings, the City of Tukwila would like the TPMPD to approve and sign a Facilities Use Agreement. The agreement and exhibit been reviewed and approved by the City's Attorney and the TPMPD Executive Director and Attorney.

ATTORNEY REVIEWED: Yes

RECOMMENDED ACTION:

The Board of Commissioners is asked to vote to approve (or disapprove) the execution of the attached Facility Use Agreement.

ATTACHMENTS

- MPD Facility Use and Indemnification Agreement
- Exhibit A Facility Use Agreement

FACILITY USE AND INDEMNIFICATION AGREEMENT

This facility use and indemnification agreement, (hereinafter "Agreement"), is entered into by and between the City of Tukwila ("Tukwila") and the Tukwila Pool Metropolitan Park District ("TPMPD"), both of whom are Washington municipal corporations (collectively, the "Parties"). In consideration of the mutual promises and covenants contained herein, the Parties hereby agree as follows:

1. **Facility Use.** Tukwila agrees to allow TPMPD to utilize the City of Tukwila City Council Chambers and other City facilities as mutually agreed upon in advance (the "Facility"), for the purposes of holding TPMPD Board of Commissioners and TPMPD committee meetings. TPMPD Board of Commissioners meetings shall be held on the fourth Wednesday of each month and/or on other days and times mutually agreed upon by the parties. Committee meetings shall be held on the second Thursday of each month from 5:00 p.m.-7:00 p.m. in the Hazelnut Conference Room and/or on other days and times mutually agreed upon by the parties.
2. **Term of Agreement.** The term of this Agreement shall commence on March 1, 2014 and shall terminate on December 31, 2014 unless sooner terminated in the manner hereinafter provided.
3. **Access.** Tukwila shall provide key card access to the Facility to the TPMPD Executive Director and Board of Commissioners President. TPMPD agrees that it will ensure that facility is empty after each use and that the TPMPD Executive Director or Board of Commissioners President shall lock all exterior doors before leaving.
4. **Rules and Regulations.** TPMPD agrees to abide by the rules and regulations set forth in Exhibit A, attached hereto and incorporated herein by this reference.
5. **Insurance.** TPMPD shall carry and maintain, for the duration of this Agreement General Liability insurance against claims for injuries to person or damage to property which may arise from or in connection with the use of the Facility. The General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$1,000,000 general aggregate. Tukwila shall be named as an insured on TPMPD's General Liability insurance policy. The insurance policy shall contain, or be endorsed to contain that the User's insurance coverage shall be primary insurance as respect Tukwila. The insurance policy shall have a thirty (30) calendar days prior notice of cancellation clause to be given to the other party, in writing, in the event of termination or material modification of the insurance coverage. In the alternative, TPMPD may satisfy the requirements of this section by becoming or remaining a participant in an authorized self-insurance pool in the State of Washington if such self-insurance provides protection equal to or greater than that specified herein. Any insurance, self-insurance, or insurance pool coverage maintained by Tukwila shall be excess of TPMPD's insurance and shall not contribute with it. TPMPD's

FACILITY USE AND INDEMNIFICATION AGREEMENT

PAGE - 1

maintenance of insurance as required by the agreement shall not be construed to limit the liability of TPMPD to the coverage provided by such insurance, or otherwise limit Tukwila's recourse to any remedy available at law or in equity.

6. **Indemnification.** TPMPD shall defend, indemnify and hold harmless Tukwila, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of the use of Facility or from any activity, work or thing done, permitted, or suffered by TPMPD, its officers, employees, agents, volunteers, or invitees, in or about the Facility, except only such injury or damage as shall have been occasioned by the negligence of Tukwila.
7. **Assignment.** TPMPD shall not assign, convey or transfer this Agreement or any interest herein, without the prior written consent of Tukwila.
8. **Notice.** Any notice, declaration, demand or communication to be given by a party to this Agreement to the other shall be in writing and transmitted to the other party by personal service or certified U.S. mail, return receipt requested, postage fully prepaid, addressed as follows:

To Tukwila:

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

To TPMPD:

Tukwila Pool Metropolitan Park District
6200 Southcenter Blvd.
Tukwila, WA 98188
Attn: President

The mailing and certifying of any such notice as herein provided shall be sufficient service thereof. All notices given in compliance with this section shall be deemed effective two (2) business days following the deposit thereof in the U.S. mail, irrespective of the date of actual receipt of such notice by the addressee. Either party may by notice change its address for notice.

9. **Applicable Law/Construction/Venue.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington. In the event this Agreement is in conflict with the provisions of any law or statutes governing the subject matter hereof, such law or statute only to the extent of such conflict shall be controlling. The venue of any action brought to interpret or enforce any provision of this Agreement shall be laid in King County, where the Facility is situated.
10. **Entire Agreement/Amendments.** This Facility Use and Indemnification Agreement contains the entire agreement of the parties hereto and supersedes all of their previous

FACILITY USE AND INDEMNIFICATION AGREEMENT

PAGE - 2

understandings and agreements, written and oral, with respect to this transaction. 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.

11. **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.
12. **Severability.** If any provision of this Agreement shall be held invalid, the remainder of the Agreement shall not be affected thereby.
13. **Counterparts.** This Agreement shall be effective whether signed by all Parties on the same document or signed in counterparts.
14. **Termination.** This Agreement may at any time be terminated at any time and for any reason by either party providing the other with thirty (30) days written notice of the intention to terminate the same. If TPMPD's insurance coverage is canceled for any reason, Tukwila shall have the right to terminate this Agreement immediately.

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

EXHIBIT A RULES AND REGULATIONS

- Use of the Facility shall be for TPMPD Board of Commissioners meetings and TPMPD Committee meetings only.
- TPMPD assumes full responsibility and liability for the safety and conduct of all attendees, guests, board members, or employees.
- All meetings will be required to meet the occupancy load and fire and safety regulations of the City of Tukwila and State of Washington.
- Use of alcohol, tobacco, and/or drugs is prohibited.
- Access to City of Tukwila facilities shall be limited to the Tukwila City Council chambers, conference rooms, lobby, and restrooms.
- Alterations to the Facility are prohibited without prior approval.
- Tukwila owned equipment shall not be removed from the Facility or loaned to any individual or organization.
- TPMPD is responsible for set-up and clean up. TPMPD shall be responsible for returning the Facility to its original condition immediately following meetings.
- Guide Dogs or other animals that accommodate persons with disabilities are permitted in the Facility. Personal pets are not allowed.
- TPMPD shall not practice discrimination of any kind.
- Facility use is cancelled when Tukwila City Hall is closed due to an emergency.
- TPMPD is responsible for clearing out the Facility at the end of every meeting and locking the doors at the end of every meeting.
- The misuse of the Facility or failure to conform to the Rules and Regulations and general information herein will be sufficient cause to close a meeting down and terminate this Agreement.
- Access to City facilities will be granted through the use of a key card issued by the City of Tukwila, with the following requirements:
 - The key card will be used solely by the individual named on the card and will not be shared out or lent to any other individual or organization;
 - If the key card is lost or stolen, notice should be provided to the Human Resources Department immediately.