

INFORMATIONAL MEMORANDUM

Tukwila Pool Metropolitan Park District

TO: **Tukwila Pool MPD Board of Commissioners**

FROM: Jennafer Price Cargill, TPMPD Executive Director

DATE: June 25, 2014

SUBJECT: **Transfer of Ownership for Pool Facility between City and TPMPD**

ISSUE

Approval to transfer ownership of the Tukwila Pool from the City of Tukwila to the Tukwila Pool Metropolitan Park District.

FINANCIAL IMPACT

None

BACKGROUND

The City of Tukwila acquired the Tukwila Pool (previously the "South Central Pool") from King County in 2003 pursuant to the terms of the Intergovernmental Transfer Agreement between King County and the City of Tukwila. In 2011 the citizens of Tukwila voted to create the Tukwila Pool Metropolitan Park District for the purpose of maintaining and operating the pool for the community's continued use. Therefore, the City has drafted the attached documents to legally transfer ownership of the pool to the TPMPD, subject the covenants, terms, and conditions set forth in the original King County Transfer Agreement.

A version of the agreement was put before the TPMPD Board on April 23, 2014. They requested one change to the language (the removal of a reference to an inspection). The City agreed to the change and a revised version is being presented.

ATTORNEY REVIEWED: Yes

RECOMMENDED ACTION:

It is recommended that the Board of Commissioners consider a motion to approve the Board President and Clerk of the Board to execute the attached Intergovernmental Transfer Agreement and the Bargain and Sale Deed transferring legal ownership of the Tukwila Pool to the TPMPD.

ATTACHMENTS

- Intergovernmental Transfer Agreement (revised 6-11-2014)
- Bargain and Sale Deed

**Intergovernmental Transfer Agreement Between the City of Tukwila
and the Tukwila Pool Metropolitan Park District**

This Intergovernmental Transfer Agreement (“Agreement”) is entered into on this ____ day of _____, 2014, 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”).

WHEREAS, Tukwila acquired the Tukwila Pool (previously the “South Central Pool”) from King County in 2003 pursuant to the terms of the Intergovernmental Transfer Agreement Between King County and the City of Tukwila Relating to the Ownership, Operation and Maintenance of the South Central Pool (the “King County Agreement”); and

WHEREAS, the King County Agreement set forth a number of specific covenants pertaining to use to be contained in the deed transferring ownership of the Tukwila Pool to Tukwila; and

WHEREAS, pursuant to the King County Agreement, the same covenants must be included in any future deed transferring the Tukwila Pool for public park, recreation or open space uses; and

WHEREAS, the TPMPD was formed in 2011 with the purpose of maintaining and operating the Tukwila Pool for recreation purposes; and

WHEREAS, the TPMPD now operates and maintains the Tukwila Pool for recreation purposes; and

WHEREAS, Tukwila desires to transfer its ownership interest in the pool to the TPMPD, subject the covenants, terms, and conditions set forth in the King County Transfer Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Tukwila and the TPMPD agree as follows:

1. Conveyance of Title.

- 1.1 Within thirty (30) days of execution of this Agreement, Tukwila shall convey to the TPMPD by deed all its ownership interest in the Tukwila Pool

(the “Property”), which is described more fully Exhibit A.

- 1.2 All deeds shall also contain the following specific covenants pertaining to use, which covenants shall run with the land. Tukwila and the TPMPD agree that Tukwila and King County shall have standing to enforce these covenants, which shall be set forth as follows:

The TPMPD, as required by RCW 36.89.050, covenants that the Property shall be continued to be used for open space, park, or recreation purposes or that other equivalent facilities within the King County shall be conveyed to King County in exchange therefore.

The TPMPD covenants that it shall abide by and enforce all terms, conditions and restrictions in King County Resolution 34571, including that the TPMPD covenants that the Property will continue to be used for the purposes contemplated by King County Ordinance 34571, that the Property shall not be transferred or conveyed except by agreement providing that such lands shall continue to be used for the purposes contemplated by King County Resolution 34571, and that the Property shall not be converted to a different use unless other equivalent lands and facilities within King County or Tukwila shall be received in exchange therefore.

The TPMPD covenants that it shall not use the Property in a manner that would cause the interest on King County bonds related to the Property to no longer be exempt from federal income taxation.

The TPMPD covenants that it will not limit or restrict access to and use of the Property by non-City residents in any way that does not also apply to city residents. The TPMPD covenants that if differential fees for non-Tukwila residents are imposed, they will be reasonably related to the cost borne by Tukwila taxpayers to maintain, improve or operate the Property for parks and recreation purposes.

The TPMPD covenants that it shall place the preceding covenants in any deed transferring the Property or a portion of the Property for public park, recreation or open space uses.

- 1.3 The TPMPD and Tukwila agree that the assignment of Tukwila's lease for the underlying real property upon which the Tukwila Pool is built will convey all the rights and obligations of Tukwila contained in the lease, and that the TPMPD shall assume all the rights and obligations of Tukwila, including the covenants, contained in the lease.
- 1.4 The Property being conveyed includes the equipment and supplies that are necessary to operate and maintain the Tukwila Pool. Tukwila will leave such equipment and supplies on site, which equipment and supplies will include all furniture, lifeguard equipment, first aid supplies, specialty tools, operator manuals, as-built pool and remodel plans, phone system, lighting fixtures, miscellaneous pool equipment, building maintenance supplies, spare parts, and materials such as chlorine and filtration supplies for pool maintenance.
2. **Existing Restrictions, Agreements, Contracts or Permits.** The TPMPD shall abide by and enforce all terms, conditions, reservations, restrictions and covenants of title at the time of conveyance and/or in the deed of conveyance.
3. **Condition of Premises and Responsibility for Operations, Maintenance, Repairs, Improvements, and Recreation Services.**
 - 3.1 The TPMPD agrees to accept the Property in AS IS condition, and to assume full and complete responsibility for all operations, maintenance, repairs, improvements of, and provision of recreational services at the Property.
 - 3.2 Tukwila does not make and specifically disclaims any warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose, with respect to the Property, and no official, employee, representative or agent of Tukwila is authorized otherwise.
 - 3.3 The TPMPD acknowledges and agrees that Tukwila shall have no liability for, and that the TPMPD shall release and have no recourse against Tukwila for, any defect or deficiency of any kind whatsoever in the Property without regard to whether such defect or deficiency was known or discoverable by the TPMPD or Tukwila.
4. **Indemnification and Hold Harmless.**
 - 4.1 Tukwila shall indemnify and hold harmless the TPMPD and its elected officials, officers, agents or employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, (i) which are caused by or result from a negligent

action or omissions of Tukwila, its officers, agents and employees in performing its obligations pursuant to this Agreement, and/or (ii) arising from those occurrences related to the Property that occurred prior to formation of the TPMPD. In the event that any suit based upon such a claim, action, loss or damage is brought against the TPMPD or the TPMPD and Tukwila, Tukwila shall defend the same at its sole cost and expense and, if final judgment be rendered against the TPMPD and its officers, agents and employees or jointly against the TPMPD and Tukwila and their respective officers, agents and employees, Tukwila shall satisfy the same.

4.2 The TPMPD shall indemnify and hold harmless Tukwila and its elected officials, officers, agents and employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, (i) which are caused by or result from a negligent act or omission of the TPMPD, its officers, agents and employees in performing obligations pursuant to this Agreement, and/or (ii) arising from those occurrences related to the Property that occurred on or after the formation of the TPMPD. In the event that any suit based upon such a claim, action, loss or damage is brought against Tukwila or Tukwila and the TPMPD, the TPMPD shall defend the same at its sole cost and expense and, if final judgment be rendered against Tukwila and its officers, agents and employees or jointly against Tukwila and the TPMPD and their respective officers, agents and employees, the TPMPD shall satisfy the same.

4.3 Each Party to this Agreement shall immediately notify the other of any and all claims, actions, losses or damages that are or are brought against that Party relating to or pertaining to the Property.

4.4 Each party agrees that its obligations under this paragraph extend to any claim, demand, and/or cause of action brought by or on behalf of any employees, or agents. For this purpose, each party, by mutual negotiation, hereby waives, with respect to the other party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify the other party.

5. **Waiver and Amendments.** Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition shall be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

6. **Entire Agreement and Modifications.** This Intergovernmental Agreement and its Exhibits sets forth the entire agreement between the parties with respect to the subject matter hereof. It may be supplemented by addenda or amendments,

which have been agreed upon by both parties in writing. Copies of such addenda and amendments shall be attached hereto and by this reference made part of this contract as though fully set forth herein.

7. **Duration and Authority.** This agreement shall be effective upon signature and authorization by both parties. The terms, covenants, representations and warranties contained herein shall not merge in the deed of conveyance, but shall survive the conveyance and shall continue in force unless both parties mutually consent in writing to termination.

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

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
Legal Description

Those real property improvements, including fixtures and equipment, located in the west 190 feet of the southwest one-quarter of the southeast one-quarter of Section 15, Township 23, Range 4 East, W.M., in King County, Washington, EXCEPT the south 20 feet for South 144 Street.