

INFORMATIONAL MEMORANDUM
Tukwila Pool Metropolitan Park District

ITEM NO
5.H.

TO: Tukwila Pool MPD Board

FROM: Steve Burke, Interim Executive Director

DATE: December 2, 2014

SUBJECT: Interlocal Agreement between the City of Tukwila and the Tukwila Pool Metropolitan Park District (TPMD).

ISSUE

An Interlocal agreement to outline the parties' continuing obligations after the City ceases providing the support services to the TPMPD.

FINANCIAL IMPACT

Outlined in the agreement.

BACKGROUND

The Agreement enclosed in this packet was approved by the Tukwila City Council on November 17, 2015.

DISCUSSION

The City Council approved the attached agreement on November 17, 2015. There has been discussion between the Tukwila City Attorney, the MPD attorney, and myself regarding possible amendments to the agreement. However, it is important that we pass this agreement prior to the end of the year. We recommend that you provide direction to the attorneys and myself to work out any suggested minor changes and bring back an amendment to the same at the January TPMPD meeting.

RECOMMENDATION

Authorize the Board President to sign an Interlocal Agreement with the City of Tukwila to outline the parties' continuing obligations after the City ceases providing support services to the TPMPD.

ATTACHMENTS

Interlocal Agreement

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

This Agreement, dated as of _____, 2014, 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 Pool Metropolitan Park District** (“TPMPD”), 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 Pool Metropolitan Park District is a municipal corporation created pursuant to a vote of the people held on August 16, 2011 under chapter 35.61 RCW with responsibility for ownership and operation of the Tukwila Pool.

1.2. Since its creation in 2011, the TPMPD has contracted with the City for support services.

1.3 In September 2014, the City provided the TPMPD with notice of its intent to terminate the Parties’ interlocal agreement for support services (the “Support Services ILA”) as of December 31, 2014.

1.4 The Parties acknowledge that there may be continuing obligations on the part of both the City and TPMPD after termination of the Support Services ILA.

1.5 The purpose of this Agreement is to set forth and clarify the roles and responsibilities of the Parties after termination of the Support Services ILA.

Section 2. TPMPD Records.

2.1. The Parties acknowledge that TPMPD emails for the period August 16, 2011, through December 31, 2014 cannot be extracted from the City’s email archive and will continue to exist in the City’s email archive. The City agrees that in the event TPMPD receives a public records request for records that may be contained in the City’s email archives, the City shall, upon written request of the TPMPD, search for and provide such records to the TPMPD. The City agrees to provide these records expeditiously; provided, the records may be provided in installments. The TPMPD shall be responsible for processing any public records request for such records, including all correspondence with the requesters.

2.2. The TPMPD agrees to pay the City for providing these records based on the hourly wages and benefits of City staff and their time spent searching for and producing these records. The City shall provide the TPMPD with an itemized invoice identifying the basis for the staff cost, the time spent, and the activities performed.

2.3 The City shall transfer all non-email records belonging to the TPMPD to the TPMPD on or before December 31, 2014, at which time the TPMPD shall become the designated custodian of said records. As the designated custodian of TPMPD records, the TPMPD shall be responsible for compliance with all legal requirements relating to public records, including, but not limited to, records retention and destruction. The TPMPD agrees to retain and destroy all public records pursuant to this agreement consistent with the applicable provisions of Chapter 40.14 RCW, the applicable rules and regulations of the Secretary of State, Division of Archives and Records Management.

Section 3. TPMPD Finances.

3.1. The Parties acknowledge that the City Finance Director has acted as Treasurer for the TPMPD since 2011. The City Finance Director shall transition out of this role on or before December 31, 2014; however, the City Finance Department's expertise and records will be needed to complete the 2014 End of Year Audit (EOY Audit) and to close the TPMPD's financial books for 2014, which will not occur until early 2015.

3.2. The TPMPD agrees to pay the City for providing the services set forth in Section 3.1 above based on the hourly wages and benefits of City staff and their time spent providing these services. The City shall provide the TPMPD with an itemized invoice identifying the basis for the staff cost, the time spent, and the activities performed.

3.3. On or before December 31, 2014, the City will transfer excess TPMPD funds to the TPMPD. For purposes of this Section, "excess" shall mean any funds not needed for known TPMPD expenses that have not been paid yet. However, the exact amount of TPMPD funds will not be known until all 2014 deposits have cleared and all invoices have been paid. The City will conduct a second transfer of all outstanding TPMPD funds to the TPMPD as soon as all 2014 deposits have cleared and all 2014 invoices have been paid.

3.4. Any 2014 invoices that are the responsibility of the TPMPD and that are received by the City after December 31, 2014, shall be transferred to the TPMPD for payment and payment of such invoices shall be the responsibility of the TPMPD.

Section 4. City Policies, Procedures, Templates, and Lessons Programs.

4.1. The City agrees that the TPMPD may adapt and/or utilize any City policies, procedures, templates, or lessons programs created by the City.

Section 5. Miscellaneous.

5.1 Term of Agreement. This Agreement shall take effect as of the date first written above and shall continue until terminated by mutual agreement of the Parties.

5.2 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. 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.

5.3 Amendments. No amendment of any provision of this Agreement is valid unless set forth in a written amendment signed by the Parties.

5.4 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.

5.5 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.

5.6 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.

5.7 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. 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.

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

5.9 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 TPMPD:	Tukwila Pool Metropolitan Park District Board President 4414 South 144 th Street Tukwila, WA 98188 Telephone: 206-267-2350 Email: MPDDirector@Tukwilapool.org
If to the City:	The City of Tukwila City Clerk 6200 Southcenter Blvd. Tukwila, WA 98188 Telephone: 206-433-1800 E-mail: TukwilaCityClerk@TukwilaWA.gov

5.10 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.

5.11 Indemnification of the City. The TPMPD shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the TPMPD and the City, its officers, officials, employees, and volunteers, the TPMPD's liability hereunder shall be only to the extent of the TPMPD's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the TPMPD's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

The provisions of this section are expressly intended to apply to any claim brought under the Washington State Public Records Act that relate to provision of TPMPD records held by the City, as well as to any claims arising out of the TPMPD's use of City policies, procedures, templates, or lesson programs.

5.12 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: _____
De'Sean Quinn, Board President

Approved as to Form:

Approved as to Form:

Rachel B. Turpin,
City Attorney

Brian Snure,
TPMPD Attorney