

4/14/88

INTRODUCED BY: PAUL BARDEN

PROPOSED NO.: 88-314

ORDINANCE NO. **8490**

AN ORDINANCE approving a use agreement with the Seattle Organizing Committee of the Goodwill Games, requiring the future expenditure of unappropriated funds.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The county executive is hereby authorized to enter in a use agreement with the Seattle Organizing Committee of the Goodwill Games in substantially the form attached hereto, which requires the expenditure of funds from appropriations in subsequent fiscal years.

INTRODUCED AND READ for the first time this 18th day of April, 1988.

PASSED this 2nd day of May, 1988.

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

Gary Grant  
Chairman

ATTEST:

Dorothy M. Owens  
Clerk of the Council

APPROVED this 12<sup>th</sup> day of May, 1988.

Jim Hill  
King County Executive

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#### C. USE OF THE FACILITY

The County agrees to license and permit the SOC to use the Facility for the Events, according to the schedule attached hereto as Exhibit A. This use shall include all structures, equipment and other appurtenances incorporated in or adjacent to the Facility including locker rooms, the press areas, office space, all parking areas, and all areas and facilities necessary for the proper staging, hosting, watching and broadcasting of the Events.

The parties acknowledge and agree that specific Events are subject to change, without changing the terms of this Agreement, provided that the County receives written notice of any Event change no later than April 15, 1990.

#### D. ACCESS AND ACCREDITATION

The SOC and its officers, board members, employees, agents and other designees, shall have sole and complete control over the organization, management and conduct of the Events, and exclusive access to and control of the Facility for the Events and related set-up, security preparations, practice days and close-out, during the term of its use under this Agreement.

In addition to such exclusive use, SOC personnel and their designees shall have nonexclusive access to the Facility during regular business hours, and with the County's prior consent, for such purposes as media and communications preparations, facilities review by sporting officials, construction of any improvements (with the County's prior consent), security inspections, and other preparations.

The SOC shall have sole, exclusive and complete control of and responsibility for accreditation of press and others attending the Events.

#### E. CONDITION OF FACILITY; IMPROVEMENTS

The County shall furnish the Facility in a clean, safe condition, reasonably fit for the purposes for which it is to be used, provided that if the Facility has not yet been given Final Acceptance by the County at the time of the Events, the SOC will look to Sabey, rather than the County, for any problems related to performance, operation or appearance of the Facility which are attributable to the incomplete construction. The SOC may make any

alterations or improvements the SOC deems necessary to conduct the Events, provided that (1) with respect to temporary improvements, the SOC will promptly restore the Facility to its prior condition at the conclusion of the Events, and (2) with respect to permanent improvements, the County's prior consent shall be required.

The County shall specifically be responsible for operating all pool tanks and internal atmospheric controls so as to maintain water and air temperatures consistent with SOC requirements.

At least 120 days before the Events, the County shall provide the SOC with a detailed operating plan for SOC approval, which addresses the County's steps to ensure the proper operation of the Facility, including the officiating, scoring, timing, sound, pool, mechanical, plumbing, and electrical systems.

#### F. CONCESSIONS AND PUBLICATIONS

SOC shall have the right to operate, or to contract with third-party vendors to operate food and beverage concessions, and receive all proceeds from such food and beverages sales during the Events.

The sale of all novelty and concessionaire items prior to, during, and immediately after the Events, other than food and beverages, shall be controlled solely by the SOC or its licensees, and all revenues derived therefrom shall be the sole property of the SOC. The SOC shall have sole and complete control over the preparation, advertisement, sale and distribution of souvenirs, publications and programs, and all revenues derived therefrom shall be the sole property of the SOC. The SOC shall have the right to setup tables and stands within the Facility, and on the surrounding site, for the sale of novelty items and souvenir publications.

#### G. ADVERTISING AND FACILITY NAME

##### 1. General

The County agrees that there shall not be within the Facility or within visibility from any areas of competition or spectator areas, during the Events, any commercial advertising or signage except advertising or signage approved by the SOC. The

SOC and TBS shall have the exclusive right to sell advertising signage during the Events and to retain all revenue derived therefrom.

2. Pool Name

The competitive aquatics components of the Facility shall be individually named, which name (i) shall contain the name of a private donor who has made a significant contribution towards the design and construction of the Facility, as selected and determined by the SOC, subject to the approval of the County, which approval shall not be unreasonably withheld; (ii) shall permanently appear on the facade of the building in lettering of comparable size and type as any King County name, as well as on all correspondence, signs and any and all other materials regarding the Facility.

3. Scoreboard and Automatic Officiating Equipment

The SOC shall have an unrestricted right to sell advertising on the scoreboard and automatic officiating equipment for a period of ten (10) years.

H. PERSONNEL

The SOC shall designate a Commissioner who will be the SOC's principal designee responsible for planning and implementing the Events and for liaison with County personnel. The County shall designate one member of the Facility's permanent management staff as Venue Owner Coordinator responsible for liaison with the SOC and planning and implementing facility administration related to the Games.

The County shall provide without cost to the SOC, operating personnel to adequately staff the Facility during the Events, except that the SOC shall provide all necessary lifeguards and ushers and other personnel specified elsewhere herein, which may be volunteers. All County and SOC personnel must pass SOC security clearance procedures.

The SOC shall have the right to supply appropriate uniforms to be worn by Facility personnel during the Events.

#### I. TICKETING

The SOC shall have sole, exclusive and complete control over all aspects of ticketing, admissions, invitations, complimentary tickets, and related functions, including without limitation printing, pricing, sale, distribution and accounting. As between the County and the SOC, the SOC shall retain all rights, title and interest in and to all receipts from ticket sales.

The parties acknowledge that SOC shall distribute a reasonable number of tickets to TBS' sponsors, sports officials, VIPs and others without charge.

#### J. MEDIA RIGHTS AND RELATIONS

The SOC exclusively reserves all media and broadcast rights to itself and TBS, including without limitation television and radio broadcasts of the Events, and all revenue therefrom. During the Events, and at reasonable times before and after the Events, the County shall provide full Facility access to TBS and other broadcasters designated by the SOC for the purpose of producing the broadcasting coverage of the Events.

The SOC shall have exclusive and complete control over all relations with the media, including without limitation, press releases relating to the Events and the Goodwill Games.

#### K. PARKING AND TRANSPORTATION

The County shall make available to the SOC the on-site parking facilities at the Facility which the SOC may allocate between its own parking and staging purposes use and paid parking for spectators plus bus parking areas. The SOC shall be responsible for operating paid spectator parking at its own expense and shall be entitled to the revenue therefrom. The SOC, at its sole discretion, shall set all parking rates for the Events.

The parties acknowledge and agree that special arrangements for access, unloading, parking and storage must be agreed upon with respect to the Events.

## L. UTILITIES; STAGING

The County shall provide presently installed lighting and HVAC, and all normal utilities, as well as use of the public address and sound systems, and all existing scoreboards and reader boards. The County agrees to take all actions necessary to assure that the lighting and sound system in the Facility will meet or exceed television broadcast standards and specifications to be established by TBS. TBS may further enhance the lighting or sound system for broadcast purposes, without expense to the County.

The County, at its expense, shall be responsible for installation and removal of any staging (except broadcast equipment) and all stagehand personnel required for presentation of the Events, with the assistance of SOC personnel as deemed necessary by the SOC. The SOC shall be responsible for Facilities' decor and aural environment during the Events. The County shall be responsible for changes in temporary seating configurations, using its own personnel at its own expense.

## M. MAINTENANCE; WASTE REMOVAL; SUPPLIES

The County shall provide at its expense, cleaning, maintenance and waste removal at a high level of cleanliness during the Events, using County personnel or contract agents, subject to the SOC's security requirements. The County shall provide all normal janitorial supplies and towels necessary for the Events.

## N. SECURITY

Law enforcement authority at the Facility shall be established by a separate agreement or by the laws establishing police jurisdiction at the site, provided that the SOC has the right to exclude from Facility premises any County employee or agent or any other person who does not clear SOC security checks.

## O. INSURANCE; HOLD HARMLESS

(1) Liability Insurance. Comprehensive general public liability and property damage liability insurance in the amount of no less than \$1,000,000 combined single limit bodily injury and/or property damage liability, insuring both the County and the SOC, shall be required before use of the Facility as outlined in this Agreement is permitted. SOC shall be responsible for providing

the above insurance, at its costs and naming the County as an insured on the SOC's policy with respect to use of the Facility. The County shall not be responsible for the payment of any premiums or deductibles. Proof of such insurance or other evidence satisfactory to County shall be provided by the SOC before any Events are permitted. The insurance provider must be licensed to do business in the state of Washington. The certificate must include a prior thirty (30) days notice by carrier of its intent to cancel, materially change, or refuse to renew coverage provided. If such evidence is not presented, the Events shall be cancelled, unless the SOC thereafter provides satisfactory evidence of coverage in a timely manner.

(2) Hold Harmless. SOC expressly agrees to indemnify and defend the County, its elected and appointed officials, employees and agents, from and against liability for any claims (including all demands, suits and judgments) for damages arising out of injury to person or damage to any property where such injury or damage is caused by, arises out of, or is incident to scope of activities under this Agreement. The SOC's obligations under this section shall include:

(a) Indemnification for claims which arise from the sole negligence of the SOC, or to the extent of the SOC's negligence in the case of concurrent negligence of both parties.

(b) The duty to promptly accept tender of defense and provide defense to the County at the SOC's own expense.

(c) Indemnification of claims made by the SOC's own employees or agents.

(d) Waiver of SOC's (as to the County) immunity under the industrial insurance provisions of Title 51 RCW, which waiver has been mutually negotiated by the parties.

In the event it is necessary for the County to incur attorneys' fees, legal expenses, or other costs to enforce the provisions of this section, all such expenses and costs shall be recoverable from the SOC.

#### P. MISCELLANEOUS

(1) The parties shall be excused from performance of their respective obligations hereunder in the event that the Games or the Events are cancelled, or performance of either party's

obligations hereunder becomes impossible due to circumstances beyond the parties' control, including Sabey's failure to complete the Facility in time for its use.

(2) The parties agree that disputes between them shall be resolved through binding arbitration in accordance with the Federal Rules of Evidence and the rules of the American Arbitration Association. However, neither party shall be required to pursue arbitration as a prerequisite to seeking injunctive relief for a material breach or threatened material breach of this Agreement by the other party.

(3) Recovery of damages by either party for any breach of this Agreement may under no circumstances exceed \$4 million. No director, officer, employee or other representative of either party shall incur any financial responsibility or liability of any kind in connection with this Agreement or any subsequent agreement between these parties.

(4) The relationship created hereby is one of licensor and licensee and independent contractor, and shall not be deemed a partnership, joint venture or agency relationship.

(5) TBS shall have the right to enforce this Agreement as a third party beneficiary.

(6) The SOC agrees to comply with all applicable federal, state and county laws, including King County Ordinance No. 7788, regarding nondiscrimination, and specifically agrees not to discriminate against any employee or applicant for employment because of age, race, color, religion, creed, sex or national origin, marital status, or the presence of any sensory, mental or physical handicap.

(7) The SOC agrees to pay on a current basis, all taxes or assessments levied on its activities and property in connection with the Events; PROVIDED, however, that nothing contained herein shall modify the right of the SOC to contest any such tax, and the SOC shall not be deemed to be in default as long as it shall, in good faith, be contesting the validity or amount of any such taxes.

(8) The County reserves the right to eject or cause to be ejected from the Facility, any person or persons violating the rules or regulations of the Facility or any county or state law; and neither County nor any of its officers, agents or employees shall be liable to the SOC for any damages that may be sustained



by the SOC through the exercise by County of such right.

(9) This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 1988, in King County, Washington.

KING COUNTY

SEATTLE GOODWILL GAMES ORGANIZING COMMITTEE

By \_\_\_\_\_  
TIM HILL  
King County Executive

By \_\_\_\_\_  
ROBERT M. WALSH,  
President

APPROVED AS TO FORM:

By \_\_\_\_\_

By \_\_\_\_\_

OPERATING BUDGET

8490

Goodwill Games and Two Preparatory Meets

ASSUMPTIONS

Two events prior to the Goodwill Games, three days each -- with the earliest no later than mid-May, 1990.

Goodwill Games and practice are figured at 18 days.

REQUIREMENTS DURING 24 DAYS OF EVENTS

Inside janitorial (\$6/hr. x 1000 hrs.)	\$6,000
Parking area maintenance (\$6/hr. x 667 hrs.)	4,000
Equipment/seating setup & takedown (\$6/hr. x 333 hrs.)	2,000
Plumbing, electrical, carpentry (\$26/hr. x 242 hrs.)	6,300
Mechanical standby beyond warranty (\$36/hr. x 236 hrs.)	8,500
Sound system operator (\$30/hr. x 230 hrs.)	6,900

REQUIREMENTS IN ADVANCE OF AND DURING EVENTS

Utilities (starting on April 15, 1990.)	31,000
Supplies (including towels)	18,000
Pool Coordinator (New position to be filled 4/1/90, to coordinate staff selection, training, etc.)	15,600
Assistant Pool Coordinator (New position to be filled 6/1/90.)	7,500
Pool Mechanical Technician (New position to be filled 2/1/90, to work w/mechanical and electrical contractor to learn operational details of physical plant.)	22,000
Pool Operator (New position to be filled 6/1/90.)	7,400
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TOTAL	\$135,200

RLR:m7/8  
4/12/88

USE AGREEMENT  
FOR AQUATICS FACILITY

THIS AGREEMENT is entered into between King County, a subdivision of the State of Washington (hereinafter, the "County") and the Seattle Goodwill Games Organizing Committee, a Washington nonprofit corporation, (hereinafter the "SOC") according to the terms and conditions set forth below.

A. PURPOSE

The purpose of this Agreement is to set forth the responsibilities of the parties in the use of a County-owned aquatics facility for the 1990 Goodwill Games and certain pre-events. The County agrees to permit the SOC to use the facility according to the following terms, in consideration of the SOC'S contribution to Berkley Structures, Inc. of \$4 million for construction of the Facility and certain rights selected thereto as set forth herein.

B. DEFINITIONS

Unless another meaning is clearly intended by the context in which they appear, the following terms shall have the meanings indicated for the purposes of this Agreement.

1. "Facility" means the aquatics facility designed and built by Sabey under a separate agreement between Sabey and the County.
2. "Sabey" means Berkley Structures, a wholly-owned subsidiary of David A. Sabey.
3. "Events" means the aquatics competitions of the 1990 Goodwill Games and up to two pre-events.
4. "TBS" means the Turner Broadcasting System, Inc.