

11/15/85

INTRODUCED BY GARY GRANT

PROPOSED NO. 85-597

6411

MOTION NO. _____

A MOTION authorizing the King County executive to sign an interlocal agreement between King County and the City of Seattle pertaining to the Seattle Mariners.

WHEREAS, the King County council approved the Amended Use Agreement between King County and the Seattle Mariners on October 11, 1985, and

WHEREAS, the King County executive and the General Partner of the Seattle Mariners signed the Amended Use Agreement on October 24, 1985, and

WHEREAS, The City of Seattle and the Seattle Mariners agreed upon the city's participation in financially assisting the Seattle Mariners on October 30, 1985, and

WHEREAS, the Mayor of The City of Seattle signed an interlocal agreement with King County on October 30, 1985, reflecting the City's agreement with the Seattle Mariners and enumerating the city's, the county's, and the Seattle Mariners' rights and obligations under said agreement;

NOW, THEREFORE BE IT MOVED by the Council of King County:

The King County executive is hereby authorized to sign the attached interlocal agreement between King County and the City of Seattle enumerating the City of Seattle's, King County's, and the Seattle Mariners' rights and obligations pursuant to Section 17.4 of the Agreement to Amend Use Agreement and Settle Claims approved by the King County council on October 11, 1985.

PASSED this 16th day of December, 1985.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Chairman

ATTEST:


Clerk of the Council

AGREEMENT

This agreement is entered into between King County ("County"), a municipal corporation and a political subdivision of the State of Washington, and The City of Seattle ("City"), a municipal corporation of the State of Washington.

RECITALS

The County operates the King County Domed Stadium ("Kingdome") on behalf of all the taxpayers of the County, including those residing in the City;

Among other tenant-users, the Kingdome is the "home" of the Seattle Mariners ("Mariners"), a limited partnership and successor to the Seattle Baseball Club, a member of the American League of Professional Baseball Clubs;

The Mariners have experienced financial difficulties and have asked the County for certain adjustments in their contractual relationship, and, in fulfillment of such request, and in settlement of a pending lawsuit between the Mariners and the County, the County and the Mariners have recently amended the Use Agreement ("Use Agreement" or "Amended Use Agreement"), originally executed on March 2, 1976, providing for use and occupancy of the Kingdome by the Mariners;

The City's legislative authority, in support of the efforts of local and state government to keep major league, professional baseball in Seattle, has authorized providing certain financial assistance to the County to support Kingdome operations in return for certain considerations;

The County, the City and the Municipality of Metropolitan Seattle have heretofore entered into an agreement, pursuant to Ordinance 105420, which provides for allocations of traffic control responsibilities, among other matters; and

Agreements between units of government in the State of Washington are authorized pursuant to RCW Chapter 39.34, the Interlocal Cooperation Act; Now, Therefore

In consideration of the mutual promises made herein, the City and the County agree as follows:

I. Purposes; Legal Restraints.

As hereinafter provided, the City shall provide certain financial assistance to the County to help the County finance Kingdome operational expenses and capital expenditures in recognition of the additional burdens assumed by the County pursuant to the Amended Use Agreement between the County and the Mariners, provided the County fully executes the amendments in the Amended Use Agreement providing benefits and other considerations to the Mariners. Consistent with state law, RCW Chapter 43.09, the Accountancy Act, the County shall provide the City with certain considerations in return.

II. Term.

This agreement shall be effective on the date executed and shall expire on January 31, 1997, for payments for seasons from 1986 through 1996, unless sooner terminated pursuant to the provisions hereof.

III. City Obligations.

1. Subject to other applicable provisions of this agreement, the City shall pay to the County a sum of money calculated as follows:

(a) For each year in which there are 1.4 million or fewer paid admissions to all "regular season" baseball games played in the Kingdome and to all "playoff", "championship",

and "World Series" games played by the Mariners in the Kingdome for which the Mariners receive the proceeds of the gate in at least the same percentage per game as received during the regular season ("Home Games"), a sum equal to the City's admissions tax collected on 1.4 million paid admissions or which would have been collected on 1.4 million paid admissions, as reported by the City's Director of Licenses and Consumer Affairs ("Admissions Tax"). The words "regular season," "playoff", "championship", and "World Series" shall have their commonly understood meanings.

(b) For each year in which there are between 1.4 and 1.7 million paid admissions (1.7 million paid admissions = "Break Even Admissions") to all Mariners' Home Games a sum equal to the Admissions Tax, reduced as follows:

(i) Subtract from the Admission Tax an amount calculated by multiplying the number of paid admissions between 1.4 and 1.5 million by the following:

$$\frac{\text{Admissions Tax}}{1.4 \text{ million}} \times 2.33$$

(ii) Subtract from the sum resulting from the calculation in (i), above, an amount calculated by multiplying the number of paid admissions between 1.5 and 1.6 million by the following:

$$\frac{\text{Admissions Tax}}{1.4 \text{ million}} \times 4.67$$

(iii) Subtract from the sum resulting from the calculation in (ii), above, an amount calculated by multiplying the number of paid admissions between 1.6 and 1.7 million by the following:

$$\frac{\text{Admissions Tax}}{1.4 \text{ million}} \times 7.00$$

Examples of the calculations required in this subparagraph III.1(b) (i)-(iii) are contained in Appendix "A" to this agreement.

2. For each year of the term of this agreement, the City shall pay the sum calculated, as provided above, as follows:

- (i) Except as provided in Subparagraph III.3, thirty (30) days after receipt of the Mariners' audited financial statement (beginning with the statement for fiscal 1985) but not before January 1 of each year during the term of this agreement, the City shall pay to the County an amount equal to the Admissions Tax for the immediately preceding fiscal year.
- (ii) The amount specified above shall be adjusted upward or downward to reflect actual operations of the Mariners during the fiscal year within thirty (30) days after completion of the Mariners' fiscal year-end audit, but not before January 1, as follows:
 - (A) To reflect the actual amount of Admissions Tax for such fiscal year, which shall be a cash adjustment paid by the City to the County or by the County to the City, as applicable;
 - (B) To reflect any reductions in the assistance to be provided by the City pursuant to paragraph III.1(b), above, which may be repaid through the County, at the Mariners' option, in cash or by means of the traffic enforcement services (to be provided by the City or County) and other considerations (to be provided by the Mariners, a related foundation or other related parties or loge seats to be provided by the County) referred to in section IV, below. Such traffic enforcement services and other considerations may be carried over from year to year, to the extent they are not used to repay reductions in the assistance to be provided by the City pursuant to paragraph III.1(b), above, and used in other years for purposes of repaying such reductions as may occur in those years. Credit shall be given to the County, for purposes of calculating repayments to the City, with respect to all traffic enforcement services provided for years in which the Mariners do not achieve a Net Profit under this agreement, and for years in which traffic enforcement services are provided by the County whether or not the Mariners achieve a Net Profit, whether they are provided by the City or the County.

3. In any year in which the Mariners have achieved a Net Profit, as defined below, regardless of the number of paid admissions, the City shall provide no financial assistance to the County for Kingdome operational or capital needs, except for traffic control responsibilities. If the Mariners have achieved such a Net Profit, the payment made by the City at the outset of the year during which such Net Profit occurred, if any, shall be carried forward and credited to the City's obligation to the County for that year and immediately succeeding years so long as the Mariners achieve a Net Profit and shall be credited toward the City's obligation to the County for the next succeeding year in which the Mariners do not achieve a Net Profit, to be adjusted at the end of such year as set forth in subparagraph III.2(ii)(B), above. If, during the final baseball season covered by this agreement, the Mariners achieve a Net Profit, the City contribution paid to the County at the beginning of that season or carried forward from a previous season in which the Mariners had achieved a Net Profit shall be returned to the City, in cash, within thirty (30) days after the Mariners' fiscal year-end audit, but not before January 1, 1997.

"Net Profit" shall mean one dollar or more of net profit calculated pursuant to generally accepted accounting principles, plus amortization of all player contracts, less any gain on a sale of all or a portion of the Mariners, less expenditures for acquisition of new players, less the amount paid by the City to the County pursuant to this agreement during such year and less an amount equal to the rental payments and day of game costs foregone by the County

pursuant to the Amended Use Agreement for the years 1985, 1986 and 1987. Net Profit shall be calculated for each year by the firm of independent public accountants (which shall be a firm of national reputation and practice) then serving as the Mariners' auditors.

4. In any year in which a baseball players' strike or baseball team owners' lockout reduces the number of games scheduled to be played in the regular baseball season, the attendance figures used in paragraphs III.1(a) and III.1(b) to calculate the amount of the City payment to the County for that season shall be reduced by an amount derived by multiplying such attendance figures by a fraction in which the numerator is the number of unplayed games and the denominator is the total of regularly scheduled games. The reduction of attendance figures contemplated by this subparagraph shall not affect the determination of profitability set forth in subsection III.1(b).

IV. County Obligations.

1. The County's obligation to provide benefits to the City under this agreement shall be limited to (i) the payment for or providing of traffic enforcement services to the extent provided below; (ii) the dividing with the City of the County's share of the Mariners' profits to the extent provided below; and (iii) other considerations, described below, to be provided by the Mariners for the benefit of the City, to the extent they are actually provided by the Mariners. With regard to the last category, subparagraph (iii), the County will not be responsible for providing to the City benefits emanating from the Mariners of any particular type or value.

2. If the City provides financial assistance to the County pursuant to this agreement, the City will be entitled to benefits from the County, to the extent and of the types described below, of a value not to exceed the amount of the City financial assistance. Such benefits to the City, specifically described in subparagraphs IV.3, 4 and 5, below, shall generally consist of and be limited to:

- (i) the value of the game day traffic enforcement services currently provided by the City pursuant to City Ordinance 105420;
- (ii) the value of other considerations, agreed to by the City and the County, which are provided by the Mariners for the benefit of the City; and,
- (iii) to the extent the value of the benefits under (i) and (ii), above, are less than the value of City financial assistance the City will be entitled to receive half of the profits provided to the County by the Mariners under paragraph 18.3 of the Amended Use Agreement between the County and the Mariners.

3. (a) In years in which paid admissions to all Mariners' Home Games are less than 1.4 million, the County shall assume responsibility for traffic enforcement, which may include providing such service itself. If the County wishes to contract with the City for such traffic control responsibilities, the costs shall consist of City labor costs for its Police Department. The basis for calculating the value of such traffic enforcement services is the cost of such services for the 1984 baseball season; and such amount shall be adjusted annually for increases (or decreases) reflected in City labor settlements.

(b) If paid admissions to all Mariners' Home Games exceed 1.4 million but are less than Break Even Admissions, and if the County has contracted with the City for traffic enforcement services, County reimbursement of actual City

traffic control costs shall be reduced proportionate to the reduction in financial assistance given to the County by the City as provided in III.1(b), above, but only to the extent that the Mariners elect to provide cash consideration as set forth in III.2(ii)(B), above.

(c) If paid admissions to all Mariners' Home Games equal or exceed Break Even Admissions, the City shall resume traffic control responsibilities for the succeeding season pursuant to the agreement authorized by City Ordinance 105420.

4. The City shall give credit to the County for additional considerations to the City in the form of services and other performance by the Mariners, a related foundation or other related person, and for the loge seats, referred to in subparagraph IV.4(c), if any are provided by the County. Such other additional considerations may consist of but are not limited to the following:

(a) Tickets to or seats at Mariners' Home Games for distribution through City programs (notice to City thirty (30) days in advance of event);

(b) Baseball clinics for City residents or coaches employed to coach baseball within the City's corporate limits (notice to the City thirty (30) days in advance of event);

(c) Sharing the use of loge seats to be constructed in the Kingdom (at the discretion of the County);

(d) Tickets to the Seattle-King County Convention and Visitors Bureau for use in promoting tourism in the City;

(e) Other tourist promotion services to the City or the Seattle-King County Convention and Visitors' Bureau, such as advertising, conducted by the Mariners' in areas outside the Seattle PMSA, encouraging tourism in the City; and

(f) Conducting banquets for charitable purposes (notice to City thirty (30) days in advance of event).

All tickets and loge seats, including leases, licenses and the like, shall be valued at their face prices and shall not, under any circumstances, be resold, for cash or other consideration, counted as paid admissions, or subject to the City's admissions tax. Other in-kind remuneration provided by the Mariners, a related foundation or other related party through the County shall be valued at fair market value, as reflected in the federal income tax returns of the Mariners, a related foundation or other related party or as determined and verified in writing by the independent auditors then employed by the Mariners or the auditors employed by such related foundation, or other related person, as appropriate, or as determined by other reasonable means upon agreement by the City and the County after consultation with the Mariners.

With respect to subparagraph IV.4(e), above and other services or performance by the Mariners, a related foundation or other related party or the County as to service or performance not specified above, the City and County shall agree upon the nature of and evaluation methodology for determining fair market value for each such service or performance, upon consultation with the Mariners, before any such service or performance may be considered as reimbursement for City financial assistance to the County.

3. If the consideration set forth in IV.2, IV.3, and IV.4, above, cumulatively do not equal in value the amount of all City financial assistance provided to the County, the City shall be entitled to receive up to one-half of the profits to be received by the County under paragraph 18.3 of its Amended Use Agreement with the Mariners.

V. Termination.

- A. For Cause: The City or the County may terminate this agreement in the event the other fails to perform its obligations described in this agreement if such failure has not been corrected to the reasonable satisfaction of the other in a timely manner after notice of breach has been provided to such other party. Notice of termination pursuant to this subparagraph shall be given in writing by the party terminating this agreement to the other setting forth with reasonable clarity and detail the alleged failure to perform.
- B. For Reasons Beyond Control of Parties: The City or the County may terminate this Agreement, without recourse by the other, where performance by either is rendered impossible for reasons beyond such party's reasonable control such as, but not limited to, force majeure; war or war-like operations; civil commotion; riot; sabotage; or superior governmental regulation or control.
- C. Mariners Cease Playing: This agreement shall terminate, without recourse by either the City or the County, if the Seattle Mariners Professional Baseball Club ceases playing regularly scheduled baseball games in the Kingdome other than temporarily (such as for labor disputes, repairs to the Kingdome and the like).

VI. Dispute Resolution.

In the event of any dispute arising out of performance under or termination of this agreement, except for termination under subsection V. B and C, the matter in dispute shall be submitted to arbitration, and the arbitration shall proceed in the following manner:

(i) The City and the County shall each nominate one (1) arbitrator in writing within five (5) days after notice of arbitration is served by either party upon the other, and a third arbitrator shall be selected by these two (2) arbitrators within five (5) days.

(ii) At the written request of either the City or the County, at any time prior to the complete appointment of arbitrators, as provided above, or in the event of any default or lapse in the proceeding, the arbitration shall be held under the Rules of the American Arbitration Association.

(iii) The City and the County shall each pay the fees of the persons acting as their respective arbitrators and each party shall pay one-half (1/2) of the fees of the third arbitrator appointed pursuant to the provisions hereof.

(iv) The City and the County shall have the right to appear and be represented by counsel before the arbitrators and to submit such data and memoranda in support of their respective positions in the matter in dispute as each party may deem necessary or appropriate under the circumstances. If and when disputes are thus submitted, the decision of the arbitrators shall be binding upon the City and the County.

(v) Subject to subsequent agreement by the parties to extend such time, the arbitration panel so formed shall, within 14 days of selection of the third arbitrator, render a decision on the dispute presented to it.

VII. General Terms and Conditions.

1. Executory Agreement: This agreement will not be considered valid until executed for the City by the Mayor and for the County by the County Executive.
2. Amendments: No modification or amendment of the provisions hereof shall be effective unless in writing and signed by authorized representatives of the parties hereto. The parties expressly reserve the right to modify this agreement, from time to time, by mutual agreement.
3. No Waiver: No waiver of full performance by either party shall be construed, or operate, as a waiver any subsequent default or breach of any of the terms, covenants and conditions of this agreement. The payment or acceptance of compensation for any services after a default shall not be deemed a waiver of any right or acceptance of defective performance.
4. Remedies Cumulative: Rights under this agreement are cumulative; the failure to exercise on any occasion any right shall not operate to forfeit such right on another occasion. Each party shall also have any other remedy available at law. The use of one remedy shall not be taken to exclude or waive the right to use another.

5. Captions: The titles of sections are for convenience only and do not define or limit the contents.
6. Binding Effect: The provisions, covenants and conditions in this agreement apply to bind the parties and their representatives, successors, and assigns.
7. Contractual Relationship: This agreement does not constitute the County or the City the agent or legal representative of the other and neither is granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of the other or to bind the other in any manner or thing whatsoever except as expressly provided, herein.
8. Notices and Deliverable Materials: All notices and other material to be delivered under this agreement shall be in writing and shall be delivered or mailed to the following:

The City: Director of the Office of
Management and Budget
Third Floor - Municipal Bldg.
Seattle, WA 98104

The County:

or other respective addresses as either party may from time to time designate in writing.

This agreement is executed this 30th day of

October

, 1985.

King County

County Executive

The City of Seattle

Charles Royer

Mayor

Attest:

Leticia Macapinlac
City Comptroller and
ex officio City Clerk

Approved as to form:

Prosecuting Attorney

By _____
Chief Civil Deputy
Prosecuting Attorney

City Attorney

By Samuel H. Smith
Assistant City Attorney

State of Washington
County of King

I certify that I know or have satisfactory evidence that Randy Revelle signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the County Executive of County of King to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Seal or stamp)

Notary Public for Washington
Residing at _____
My appointment expires _____

APPENDIX "A"

The following are examples of the calculations required by subparagraph III.1(b) (i)-(iii):

Example 1. Assuming the Admissions Tax on 1.4 million paid admissions is \$360,000, and assuming attendance is 1,699,999, make the following calculations:

$$\begin{aligned}
 \text{(i)} \quad & 100,000 \times \left(\frac{\$360,000 \times 2.33}{1,400,000} \right) = \$59,914.28 \\
 \text{(ii)} \quad & 100,000 \times \left(\frac{\$360,000 \times 4.67}{1,400,000} \right) = \$120,085.71 \\
 \text{(iii)} \quad & 99,999 \times \left(\frac{\$360,000 \times 7.00}{1,400,000} \right) = \underline{\$179,998.20} \\
 & \text{Total Reduction } \$359,998.19
 \end{aligned}$$

Example 2. Assuming the Admission Tax on 1.4 million paid admissions is \$400,000, and assuming attendance is 1,550,000, make the following calculations:

$$\begin{aligned}
 \text{(i)} \quad & 100,000 \times \left(\frac{\$400,000 \times 2.33}{1,400,000} \right) = \$66,571.42 \\
 \text{(ii)} \quad & 50,000 \times \left(\frac{\$400,000 \times 4.67}{1,400,000} \right) = \$66,714.28 \\
 \text{(iii)} \quad & 0 \times \left(\frac{\$400,000 \times 7.00}{1,400,000} \right) = \underline{\$0.00} \\
 & \text{Total Reduction } \$133,285.70
 \end{aligned}$$