



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

December 17, 2002

Ordinance 14555

Proposed No. 2002-0594.2

Sponsors Edmonds

1 AN ORDINANCE authorizing the executive to enter into an
2 interlocal agreement between King County and the city of
3 Federal Way for transfer to the city of the Kenneth Jones
4 pool; and declaring an emergency.
5
6

7 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

8 **SECTION 1. Findings:**

9 A. King County is facing a multiyear fiscal crisis that is forcing major cuts in all
10 nonmandated government services funded by the current expense fund and as a result
11 does not have a sufficient, stable source of revenue to continue to operate and maintain
12 the Kenneth Jones pool in Federal Way.

13 B. Due to its fiscal crisis, King County desires to divest itself of ownership,
14 management and financial responsibility for pools, parks, open space, recreational
15 facilities and programs inside and near city boundaries.

16 C. King County and the city of Federal Way ("city") have agreed to terms of an
17 interlocal agreement for the transfer of the Kenneth Jones pool.

18 D. To avoid any service disruption at the pool, the county and the city strongly
19 desire to complete the transfer by the end of the year. To do so, this ordinance must be
20 adopted on an emergency basis.

21 E. The recitals in the agreement set forth relevant facts supporting and explaining
22 the terms of the transfer.

23 F. To provide a smooth transition without any service disruption, the agreement
24 provides for the city to pay the county to operate the pool on behalf of the city for the
25 first six months after transfer.

26 G. The equipment and supplies being conveyed along with the pool are integral
27 to the continued operation and maintenance of the pool and are surplus to the county's
28 needs.

29 H. King County and the city have agreed that the transfer will take place within
30 thirty days following execution of the interlocal agreement by both parties.

31 I. Transfer of the Kenneth Jones pool under the terms and conditions of the
32 attached agreement will serve an important county purpose by ensuring that the pool will
33 remain open and available to all county residents.

34 SECTION 2. The King County executive is hereby authorized to enter into an
35 interlocal agreement, substantially in the form of the attached agreement, with the city of
36 Federal Way relating to the transfer of the Kenneth Jones pool.

37 SECTION 3. For the reasons set forth in section 1 of this ordinance, the county
38 council finds as a fact and declares that an emergency exists and that this ordinance is
39 necessary for the immediate preservation of public peace, health or safety or for the
40 support of county government and its existing public institutions.
41

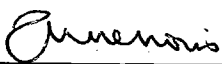
Ordinance 14555 was introduced on 12/2/2002 and passed by the Metropolitan King
County Council on 12/16/2002, by the following vote:

Yes: 13 - Ms. Sullivan, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr.
Phillips, Mr. Pelz, Mr. McKenna, Mr. Constantine, Mr. Pullen, Mr. Gossett,
Ms. Hague, Mr. Irons and Ms. Patterson
No: 0
Excused: 0

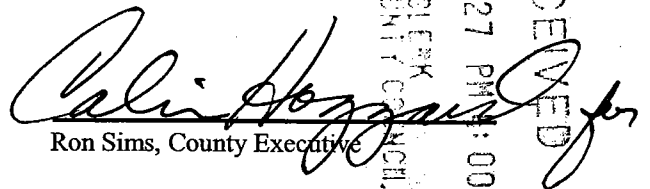
KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Cynthia Sullivan, Chair

ATTEST:


Anne Noris, Clerk of the Council

APPROVED this 17th day of December, 2002.


Ron Sims, County Executive

RECEIVED
2002 DEC 27 PM 1:00
CLERK
KING COUNTY COUNCIL

Attachments A. Intergovernmental Land Transfer Agreement Between King County and the City of
Federal Way, dated, December 12, 2002

**Intergovernmental Transfer Agreement Between
King County and the City of Federal Way**

Relating to the Ownership, Operation and Maintenance of the Kenneth Jones Pool facility, and transfer of property known as Kenwood Pit.

This Agreement is made and entered into this day by and between the City of Federal Way, hereinafter called "City", and King County, hereinafter called "County" (collectively the "Parties").

WHEREAS the City desires to own, operate, and maintain parks, open space, recreation facilities and programs and other municipal programs, facilities and property inside its boundaries, and is willing therefore to assume ownership and operating responsibility for the Kenneth Jones Pool facility ("the Pool") on an interim basis until a new city pool of equal recreational value is constructed; and

WHEREAS, the City further desires to take title to and operate as a city park that certain property located within the City commonly known as the Kenwood Pit Property, which property is currently surplus to the County's needs; and

WHEREAS, the County desires to convey the Kenwood Pit Property to the City for park purposes, upon completion of certain administrative and other procedural matters necessary to such transfer and subsequent approval by the County Council and City Council of the Interlocal Transfer Agreement; and

WHEREAS the County, under the authority of RCW 36.89.050, King County Resolution 34571 and other federal, state and county laws, has acquired and developed a substantial park, recreation and open space system that depends on the continued operation of its many individual properties and facilities in order to fully serve the needs of the residents of King County and the cities within it; and

WHEREAS, the Federal Way School District owns the property on which the Pool is located and the County and District entered into a lease dated May 6, 1970 which provided for the County's construction and operation of the Pool ("the Lease"), which Lease has a term of 40 years; and

WHEREAS the County desires to divest itself of ownership, management, and financial responsibility for parks, open space, recreational facilities and programs inside and near the City boundaries; and

WHEREAS the County does not have a sufficient, stable source of revenue to continue to manage and maintain its parks, open space, recreational facilities and programs at current levels; and

WHEREAS the County is legally restricted from converting many of these parks, open space, and recreational facilities from their current uses without expending funds to replace the converted facilities; and

WHEREAS given the legal restriction regarding conversion of the Pool, the marketability of the Pool is limited and, as a result, the cost of operating the Pool is approximately equal to or greater than the value of the Pool to the County; and

WHEREAS, because the Pool provides a benefit to the City and its residents, the City wishes to assume ownership of the Pool, as an interim facility pending the anticipated replacement of the facility as further described herein; and

WHEREAS, the City appropriated funds for the purpose of construction and operation of a community center/senior center and pool facility (the "Community Center") in Ordinance Number 02-431; and

WHEREAS, upon completion of the Community Center and the opening of a new public pool of equivalent recreational value as part of the Community Center it is the city's intent to transfer ownership of the Pool to the Federal Way School District; and

WHEREAS, in order to minimize the disruption to users of the Pool and provide for an orderly transition of the Pool to operation by the City, the County is willing to operate the Pool on behalf of, and at the cost of, the City, through June 30, 2003; and

WHEREAS to the extent the City provides scholarships, reduced fees or other means of assuring access to parks and recreational programming for City residents, the City has a goal of ensuring that such scholarships or other needs-based rates and programs are available to all persons desiring to use the Pool regardless of residency, and

WHEREAS it is in the best interest of the public that the City and the County work together to take those actions necessary to meet those desires and to cooperate in any transition to insure a smooth transition and avoid service disruption;

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, the City and the County agree as follows:

1. Conveyance of Kenneth Jones Pool

1.1 Within thirty (30) days of execution of this Agreement, the County shall convey to the City by deed all its ownership interest, and/or, when possible, by assignment, any leasehold interest or shared use responsibility in the Kenneth Jones Pool, which is described more fully in Exhibit A (hereinafter the "Property" or "Pool").

1.2 The deed of conveyance shall also contain the following specific covenants pertaining to use, which covenants shall run with the Property for the benefit of the County public park, recreation and open space system. The County and the City agree that the County shall have standing to enforce these covenants, which shall be set forth as follows:

"The City, as required by RCW 36.89.050, covenants that the Pool shall be continued to be used for recreation facility purposes or other equivalent facilities within the County or City shall be provided."

"The City covenants that it shall abide by and enforce all terms, conditions and restrictions in King County Resolution 34571, including that the City covenants that the Pool will continue to be used for the purposes contemplated by Resolution 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 Resolution 34571, and that the Property shall not be converted to a different use unless other equivalent lands and facilities within the County or City shall be provided."

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

"The City covenants that it will not limit or restrict access to and use of the Property by non-city residents. The City covenants that if differential fees for non-city residents are imposed for use of the Pool, such fees will be reasonably related to the cost borne by city taxpayers to maintain, improve or operate the Pool for parks and recreation purposes."

“The City covenants that it shall place the preceding covenants in any deeds or other documents transferring the Pool for public recreation purposes provided however that all such preceding covenants shall terminate on May 6, 2010, the expiration of the original term of the Lease and the end of the contemplated useful life of the pool as stated in Resolution 34571.”

- 1.3 The City and County agree that the assignment of the County's Lease for the underlying real property upon which the Pool is built will convey all the rights and obligations of the County contained in the Lease, and that the City shall assume all the rights and obligations of the County, including the covenants, contained in the lease.
- 1.4 The City and County agree that the conveyance and assignment of the Lease referenced in paragraph 1.1 are contingent on receiving written approval of the assignment of lease from the Federal Way School District. If such written approval is not obtained from the Federal Way School District within thirty (30) days from the execution of this Agreement, the conveyance and assignment of the Pool and its lease shall not be required until thirty (30) days after such written approval is obtained. If no acceptable form of assignment is received by February 15, 2003, then this Agreement shall be null and void.
- 1.5 The Pool being conveyed includes the equipment and supplies that are necessary to operate and maintain the Pool. The County 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. The City takes all equipment and supplies AS IS and WHERE IS, except for repairs as identified in section 4.4.8, and agrees that the County holds no future responsibility with regard to the equipment and supplies or any occurrence related to or resulting from use of the equipment and supplies. Any equipment and supplies stored at the Pool for use at other King County facilities will not be transferred.
- 1.6 It is understood and agreed by the parties hereto that the City intends to construct a new Community Center with a public pool. Provided that this new pool operates as a public pool in the same manner as required for the Pool by this Agreement and is of comparable size and equivalent recreational value as the Pool, the new pool will constitute an equivalent replacement facility for the Pool as contemplated by RCW 36.89.050 and Resolution 34571 and when the new pool is operational and open to the public the City shall be in compliance with the covenants imposing the requirements of RCW 36.89.050 and Resolution 34571 provided for in Section 1.2. The City agrees to continue to maintain and operate the Pool in accordance with

this Agreement until such new replacement pool is operational and open to the public, after which time the Pool may be permanently closed.

- 1.7 The City shall abide by and enforce all terms, conditions, reservations and covenants of title at the time of conveyance and/or in the deed of conveyance.

2. Conveyance of Kenwood Pit Property

- 2.1 It is understood and agreed that the parties anticipate conveyance of the Kenwood Pit Property to the City for park and recreation purposes as part of the City's agreement to take title to the Pool. However, such transfer cannot be administratively accomplished prior to the end of 2002. It is the intent of the parties that within six (6) months of execution of this Agreement, the County shall convey to the City by bargain and sale deed, all its ownership interest, and/or, when possible, by assignment, any leasehold interest or shared use responsibility to the Kenwood Pit for future use by the City for park and recreation purposes, subject to general terms and conditions in substantially similar form to those described in Exhibit B.
- 2.2 If the County Council has not adopted an Ordinance approving the Interlocal Agreement to convey the Kenwood Pit Park in a form substantially similar to Exhibit B prior to July 1, 2003, then the County agrees that at the City's request, it will accept a conveyance back of the right, title and interest in the Pool and the Lease from the City, at which time the County will mothball the Pool unless other parties provide money for its operation.

3. Financial Arrangement

- 3.1 The County agrees to pay to the City Seventy-five Thousand and no/100 Dollars (\$75,000) for the purpose of making capital improvements to the Pool. The funds will be distributed to the City in two equal installments, with the first payable on or before December 31, 2003 and the second payable on or before December 31, 2004. These funds may be used only for the planning, construction, reconstruction, repair, rehabilitation or improvement of the Pool, or of the Community Center, to the extent the latter use is consistent with County's Real Estate Excise Tax requirements.
- 3.2 In addition, the County will pay additional capital funds to the City in an amount to be determined by the County, which will be not less than Fifty Thousand and no/100 Dollars (\$50,000) for the purposes described in section 3.1. The additional capital dollars will be distributed to the City no later than December 31, 2003 and December 31, 2004 in approximately equal installments. Under no circumstance will the amount of additional capital funds transferred to the City exceed One

Hundred Twenty-Five Thousand and no/100 Dollars (\$125,000). These funds may be used only for the planning, construction, reconstruction, repair, rehabilitation or improvement of the Pool, or of the Community Center, to the extent the latter use is consistent with the County's Real Estate Excise Tax requirements.

3.3 The County agrees to provide the City with a one-time payment of Seventy-Six Thousand and Eight and no/100 Dollars (\$76,008) to be used for the operation and maintenance of the Pool. These funds will be distributed to the City no later than January 31, 2003.

4. Condition of Premises and Responsibility for Operations, Maintenance, Repairs, Improvements, and Recreation Services

4.1 The City has inspected and knows the condition of the Pool and agrees to accept the Pool in AS IS condition. Except as provided in paragraph 4.4, the City further agrees to assume full and complete responsibility for all operations, maintenance, repairs, improvements of, and provision of recreational services at, the Pool.

4.2 The County 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 Pool, and no official, employee, representative or agent of the County is authorized otherwise.

4.3 The City acknowledges and agrees that except as indicated in paragraph 5.2 the County shall have no liability for, and that the City shall release and have no recourse against the County for, any defect or deficiency of any kind whatsoever in the Pool without regard to whether such defect or deficiency was known or discoverable by the City or the County. This paragraph does not limit the County's obligation to indemnify the City under paragraphs 6.1(i) and 6.6 of this Agreement during the Operating Period.

4.4 Consistent with this Agreement, sound management practices, staffing limitations, available funds and applicable legal requirements, the County shall operate the Pool on behalf of the City for the period from January 1, 2003 through June 30, 2003 ("Operating Period"). The County shall use its best efforts to operate the Pool in a manner that will result in the Actual Net Operating Costs (as defined in Section 4.4.2) equaling the Estimated Operating Payment (as defined in Section 4.4.2). Operational policies and procedures, including but not limited to hours of operation, user fees, and admittance policies, shall be determined by the County in its sole discretion, reasonably exercised; provided that to the extent practicable, the County agrees to consult with the City about proposed changes in policies and procedures in advance of implementing same. The County intends to operate the Pool generally in the same manner as in 2002, with pool user fees increased

approximately 50% above 2002 levels as further described in Exhibit C. It is understood and agreed that scheduled or unscheduled maintenance may result in the Pool being closed to the public for extended periods of time, provided that maintenance closures shall be kept to the minimum time necessary to perform such maintenance and or repair as determined by the County; provided that to the extent practicable, the County agrees to consult with the City about proposed maintenance closures in advance of implementing same.

- 4.4.1 The County shall be relieved of its obligations under this Section 4.4 to the extent performance is made impracticable by any event of force majeure, including without limitation, acts of god.
- 4.4.2 In exchange for the County's operation of the Pool, the City agrees to pay or cause to be paid to the County the total sum of One Hundred Ten Thousand Six Hundred Thirty-Eight and 50/100 Dollars (\$110,638.50) (the "Estimated Operating Payment"), payable in two equal payments made on or before February 1, 2003 and April 15, 2003. The Estimated Operating Payment has been calculated by the County as set forth in Exhibit D, and is equal to the Estimated Net Operating Cost of the Pool over the year 2003, divided by two. The Net Operating Cost of the Pool includes all applicable direct costs, including utilities, County overhead costs and non-routine maintenance costs associated with the Pool, less (1) all revenues generated at the Pool and accruing to the County from any authorized source. The "Actual Net Operating Cost" is the Net Operating Cost, as defined in the preceding sentence, as actually experienced by the County over the Operating Period.
- 4.4.3 In the event the County is successful in reducing the Actual Net Operating Costs over the Operating Period below the amount of the Estimated Operating Payment specified in Section 4.4.2 above, the County will refund the difference to the City on or before August 15, 2003.
- 4.4.4 If at any time the County in its sole discretion determines that the Actual Net Operating Costs of the Pool are or are likely to exceed the Estimated Operating Payment, then the County will notify the City of this in writing, describing: (1) the costs that are or are likely to be greater than anticipated (or revenues that are or are likely to be less than anticipated) and the reason therefor; (2) the operational changes that will be required absent additional funding; and (3) the amount of additional funding that would be necessary to avoid these operational changes (which may include closure) or other actions. The County shall not be required to further increase user fees in order to mitigate an increase in Net Operating Costs, it being understood that County-operated pool fees will be uniform across the County and that a

50% user fee increase will be imposed at the beginning of year 2003. The City will have 30 days to respond in writing as to whether it wishes to provide additional funding to avoid the operational changes or other actions. If the City determines to provide additional funding in the amount specified by the County, it shall promptly pay such amounts to the County. If the City determines not to provide additional funding, or does not respond conclusively within 30 days, the County shall proceed to make the operational changes it deems necessary in its sole discretion, reasonably exercised, are required to address the increased costs and/or funding shortfall. Prior to the 30-day response deadline, the City may suggest operations alternatives to address the funding shortfall, which the County may accept or reject in its sole discretion; provided that to the extent practicable, the County agrees to consult with the City about proposed alternatives in advance of implementing same. The City waives and releases any and all claims against the County with respect to operational changes, except for claims for personal injury or property damage arising from the negligent acts or omissions of the County, its officers, agents and employees during the Operating Period.

- 4.4.5 The County shall submit an invoice for any amount due under this Agreement. The City shall have 15 days to pay upon receipt of such invoice. If the City fails to make the operating payments when due, the County shall send by registered mail and telefax a notice of default to the City, and may terminate its operation of the Pool five (5) business days after sending the telefax without further notice to the City.
- 4.4.6 The County or the City may terminate their obligations under this Section 4.4 at any time in case of a force majeure upon providing written notice thereof to the other party.
- 4.4.7 In the event that the County determines that a capital or other repair affecting the continued safe public operation of the Pool needs to be made to the facility, it shall promptly notify the City in writing. The City shall be responsible for capital repairs, and the County shall be responsible for normal maintenance repairs. The City shall promptly notify the County in writing as to what course of action the City will take with respect to a capital repair. Pending a response from the City, the County may take whatever action it deems reasonably prudent with respect to continued operation of the Pool pending the completion of the capital repair, including but not limited to closure of the Pool and the City waives and releases any and all claims against the County for such actions, except for claims for personal injury or property damage arising from the negligent acts or

omissions of the County, its officers, agents and employees during the Operating Period.

- 4.4.8 At the end of the Operating Period, the County shall quit the premises, leaving the Pool and its equipment in the same condition as it was transferred to the City, reasonable wear and tear excepted. Prior to quitting the premises, the County shall complete the following repairs: Replace refrigerant system, install dressing room light fixture seismic bracing, and remove desuperheaters.

5. Environmental Liability

- 5.1 "Hazardous Materials" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended.
- 5.2 Nothing in this agreement shall be deemed to waive any statutory claim for contribution that the City might have against the County under federal or state environmental statutes that arises from hazardous materials deposited or released on the Properties by the County during the County's period of ownership. The City may not, however, assert such a claim to the extent that the City creates the need for or exacerbates the cost of remediation upon which a statutory claim for contribution is based as a result of the City performing construction activities at the Pool, changing the configuration of the Pool, or changing the use of the Pool.
- 5.3 If the City discovers the presence of hazardous materials at levels that could give rise to a statutory claim for contribution against the County it shall immediately notify the County in writing. The parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement prior to undertaking any remediation.
- 5.4 In no event shall the County be responsible for any costs of remediation that exceed the minimum necessary to satisfy the state or federal agency with jurisdiction over the remediation.

6. Indemnification and Hold Harmless

- 6.1 The County shall indemnify and hold harmless the City 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 omission of the County, its officers, agents and employees in performing its obligations pursuant to this Agreement, and/or (ii) arising from those occurrences related to the Pool that

occurred prior to the effective date of conveyance of the Pool to the City, except to the extent that indemnifying or holding the City harmless would be limited by Section 5 of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against the City or the City and the County, the County shall defend the same at its sole cost and expense and, if final judgment be rendered against the City and its elected officials, officers, agents and employees or jointly against the City and the County and their respective elected officials, officers, agents and employees, the County shall satisfy the same.

- 6.2 In executing this Agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, rule or regulation is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City, the County or both, the City shall satisfy the same, including all chargeable costs and attorney's fees.
- 6.3 The City shall indemnify and hold harmless the County 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 City, its officers, agents and employees in performing its obligations pursuant to this Agreement, and/or (ii) arising from those occurrences related to the Pool that occurred on or after the effective date of conveyance of the Pool to the City, except to the extent that indemnifying or holding the County harmless would be limited by Section 5 of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against the County or the County and the City, the City shall defend the same at its sole cost and expense and, if final judgment be rendered against the County and its officers, agents and employees or jointly against the County and the City and their respective officers, agents and employees, the City shall satisfy the same.
- 6.4 Each Party to this Agreement shall immediately notify the other of any and all claims, actions, losses or damages that arise or are brought against that Party relating to or pertaining to the Properties.
- 6.5 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.

6.6 With respect to claims arising from occurrences during the Operating Period only, in the event that a court of competent jurisdiction finds that the City and the County were concurrently negligent in performing their obligations pursuant to this Agreement, then each party's liability under paragraphs 6.1(i) and 6.3(i) shall only be to the extent of each party's negligence. As permitted under Washington law, the County and City shall indemnify, defend, and hold the other harmless to the full extent of the indemnitor's negligence in performing its obligations pursuant to this Agreement.

7. Insurance

7.1 The County is self-insured with respect to the operation of the Kenneth Jones Pool, and therefore will not carry insurance policies with respect to the pool.

8. Audits and Inspections

8.1 Until December 31, 2008, any of either party's records related to any matters covered by this Agreement, not otherwise, privileged shall be subject to inspection, review, and/or audit by either party at the requesting party's sole expense. Such records shall be made available for inspection during regular business hours within a reasonable time of the request.

9. Duration and Authority

9.1 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 deeds or other documents of conveyance, but shall survive conveyance or assignment and shall continue in full force (1) as to the covenants in Section 1.2 of this Agreement, until May 6, 2010 or until other equivalent facilities shall be provided in compliance with the covenants imposing the requirements of Resolution 34571 and RCW 36.89.050 as provided for in section 1.6 or (2) as to the whole agreement, until both parties mutually consent in writing to termination.

10. Notice

10.1 Any notice provided for herein shall be sent to the respective parties at:

King County

City of Federal Way

Bob Burns
Acting Director Parks and Recreation
Division, DNRP

City of Federal Way
ATT: Jennifer L. Schroder
Parks and Recreation Director

Rm 700, King Street Center
201 S. Jackson Street
Seattle, WA 98104

P.O. Box 9718
Federal Way, WA 98063

11. General Provisions. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement. No provision of this Agreement may be amended or modified except by written agreement signed by the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties' successors in interest, heirs and assigns. Any provision of this Agreement that is declared invalid or illegal shall in no way affect or invalidate any other provision. In the event either of the Parties defaults on the performance of any terms of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each Party shall pay all its own attorneys' fees, costs and expenses. The venue for any dispute related to this Agreement shall be King County, Washington. Failure of the City or County to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.

IN WITNESS WHEREOF, the parties have executed this Agreement.

King County

City of Federal Way

King County Executive

David Moseley, City Manager

Date

Date

Approved as to Form:

Approved as to Form:

King County
Deputy Prosecuting Attorney

Patricia A. Richardson, City Attorney

Date

Date

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this day personally appeared before me _____, to me known to be the King County Executive in and for the County of King and that said person executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed, if any, is the seal of said municipal corporation.

GIVEN my hand and official seal this _____ day of _____, 200_.

(typed/printed name of notary)
Notary Public in and for the State of Washington.
My commission expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this day personally appeared before me David H. Moseley, to me known to be the City Manager for the City of Federal Way and that said person executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed, if any, is the seal of said municipal corporation.

GIVEN my hand and official seal this _____ day of _____, 200_.

(typed/printed name of notary)
Notary Public in and for the State of Washington.
My commission expires _____

EXHIBIT A
Legal Description of Pool

The West 192.50 feet of the East 222.50 feet of the South 355 feet of the North 385 feet of the NE 1/4 of Section 8, Township 21 North, Range 4 East, W.M., in King County, Washington.

TOGETHER WITH an easement for ingress, egress and utilities over, under, across, and through that portion of the North 385 feet of the East 30 feet of said Section 8 and of the North 385 feet of the NW 1/4 of Section 9, Township 21 North, Range 4 East, W.M., lying Westerly of 16th Ave. So.

EXHIBIT B**Intergovernmental Land Transfer Agreement Between
King County and the City of Federal Way**

Relating to the Ownership, Operation and Maintenance of Parks,
Open Space, Recreation Facilities and Programs

This Agreement is made and entered into this day by and between the City of Federal Way, hereinafter called "City", and King County, hereinafter called "County".

WHEREAS the City desires to own, operate, and maintain parks, open space, recreation facilities and programs and other municipal programs, facilities and property inside its boundaries; and

WHEREAS the County, under the authority of RCW 36.89.050, and other federal, state and county laws, has acquired and developed a substantial park, recreation and open space system that depends on the continued operation of its many individual properties and facilities in order to fully serve the needs of the residents of King County and the cities within it; and

WHEREAS the County desires to divest itself of ownership, management, and financial responsibility for parks, open space, recreational facilities and programs inside and near the City boundaries; and

WHEREAS the County does not have a sufficient, stable source of revenue to continue to manage and maintain its parks, open space, recreational facilities and programs at current levels; and

WHEREAS the County is legally restricted from converting many of these parks, open space, and recreational facilities from their current uses without expending funds to replace the converted facilities; and

WHEREAS given the legal restriction regarding conversion of the properties, the marketability of the properties is limited and, as a result, the cost of operating the facility is approximately equal to the value of the property to the County; and

WHEREAS to the extent the City provides scholarships, reduced fees or other means of assuring access to parks and recreational programming for City residents, the City has a goal of ensuring that such scholarships or other needs-based rates and programs are available to all persons desiring to use the park and recreational programs regardless of residency, and

WHEREAS it is in the best interest of the public that the City and the County take those actions necessary to meet those desires and to cooperate in any transition to insure a smooth transition and avoid service disruption;

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, the City and the County agree as follows:

1. Conveyance of Title

- 1.1 Within thirty (30) days of execution of this Agreement, King County shall convey to the City by bargain and sale deed, subject to those encumbrances listed in Exhibit 3, all its ownership interest, and/or, when possible, by assignment, any leasehold interest or shared use responsibility, in the following listed park/recreation site(s), which are described more fully in Exhibits 1 and 2 (the "Property"):

KENWOOD PIT PROPERTY PARK

- 1.2 All deeds shall also contain the following specific covenants pertaining to use, which covenants shall run with the land for the benefit of the County and the County land that makes up its public park, recreation and open space system. The County and the City agree that the County shall have standing to enforce these covenants, which shall be set forth as follows:

“The City, as required by RCW 36.89.050, covenants that the Property shall be continued to be used for open space, park, or recreation facility purposes or that other equivalent facilities within the County or the City shall be provided.”

“The City further covenants that it will not limit or restrict access to and use of the Property by non-city residents. The City covenants that if differential fees for non-city residents are imposed, they will be reasonably related to the cost borne by city taxpayers to maintain, improve or operate the Property for parks and recreation purposes.”

“The City 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 In Conveying the Property by Deed, the County shall reserve easement(s) for all County-owned utilities (if any) currently located within the property. The County will notify the City of the easements it intends to reserve under this provision prior to the conveyance called for by paragraph 1.1 of this Agreement.

1.4 The Property shall be conveyed subject to all terms, conditions, reservations, restrictions and covenants of title at the time of conveyance and/or in the deed of conveyance, which encumbrances will be identified in the deed. The final identification of these encumbrances, along with the final verification of the legal description of the Property, is dependent on receipt of a preliminary commitment for title insurance for the Property, and will occur prior to the conveyance called for by paragraph 1.1 of this Agreement.

2. Existing Restrictions, Agreements, Contracts or Permits

2.1 The City 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 City has inspected and knows the condition of the Property and 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 King County 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 King County is authorized otherwise.

3.3 The City acknowledges and agrees that except as indicated in paragraph 4.2, the County shall have no liability for, and that the City shall release and have no recourse against the County 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 City or the County.

4. Environmental Liability

4.1 "Hazardous Materials" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended.

4.2 Nothing in this agreement shall be deemed to waive any statutory claim for contribution that the City might have against the County under federal or state environmental statutes that arises from hazardous materials deposited or released on the Property by the County during the County's period of ownership. The City

may not, however, assert such a claim to the extent that the City creates the need for or exacerbates the cost of remediation upon which a statutory claim for contribution is based as a result of the City performing construction activities on the Property, changing the configuration of the Property, or changing the use of the Property.

- 4.3 If the City discovers the presence of hazardous materials at levels that could give rise to a statutory claim for contribution against the County it shall immediately notify the County in writing. The parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement prior to undertaking any remediation.
- 4.4 In no event shall the County be responsible for any costs of remediation that exceed the minimum necessary to satisfy the state or federal agency with jurisdiction over the remediation.

5. Indemnification and Hold Harmless

- 5.1 King County shall indemnify and hold harmless the City 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 omission of King County, 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 the effective date of conveyance of the Property to the City, except to the extent that indemnifying or holding the City harmless would be limited by Section 4 of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against the City or the City and King County, King County shall defend the same at its sole cost and expense and, if final judgment be rendered against the City and its elected officials, officers, agents and employees or jointly against the City and King County and their respective elected officials, officers, agents and employees, King County shall satisfy the same.
- 5.2 In executing this Agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, rule or regulation is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City, the County or both, the City shall satisfy the same, including all chargeable costs and attorney's fees.
- 5.3 The City shall indemnify and hold harmless King County 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 City, 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 on or after the effective date of conveyance of the Property to the City, except to the extent that indemnifying or holding the County harmless would be limited by Section 4 of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against King County or King County and the City, the City shall defend the same at its sole cost and expense and, if final judgment be rendered against King County and its officers, agents and employees or jointly against King County and the City and their respective officers, agents and employees, the City shall satisfy the same.

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

5.5 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.

6. Audits and Inspections

6.1 Until December 31, 2008, any of either party's records related to any matters covered by this Intergovernmental Agreement not otherwise privileged shall be subject to inspection, review, and/or audit by either party at the requesting party's sole expense. Such records shall be made available for inspection during regular business hours within a reasonable time of the request.

7. Duration and Authority

7.1 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

8.1 Any notice provided for herein shall be sent to the respective parties at:

King County

City of Federal Way

Bob Burns
Acting Director Parks and Recreation
Division, DNRP
Rm 700, King Street Center
201 S. Jackson Street
Seattle, WA 98104

City of Federal Way
ATT: Jennifer L. Schroder
Parks and Recreation Director
P.O. Box 9718
Federal Way, WA 98063

9. General Provisions. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement. No provision of this Agreement may be amended or modified except by written agreement signed by the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties' successors in interest, heirs and assigns. Any provision of this Agreement that is declared invalid or illegal shall in no way affect or invalidate any other provision. In the event either of the Parties defaults on the performance of any terms of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each Party shall pay all its own attorneys' fees, costs and expenses. The venue for any dispute related to this Agreement shall be King County, Washington. Failure of the City or County to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.

IN WITNESS WHEREOF, the parties have executed this Agreement.

King County

City of Federal Way

King County Executive

David H. Moseley, City Manager

Date

Date

Approved as to Form:

Approved as to Form:

King County
Deputy Prosecuting Attorney

Patricia A. Richardson, City Attorney

Date

Date

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this day personally appeared before me _____, to me known to be the King County Executive in and for the County of King and that said person executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed, if any, is the seal of said municipal corporation.

GIVEN my hand and official seal this _____ day of _____,
200_.

(typed/printed name of notary)
Notary Public in and for the State of
Washington.
My commission expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this day personally appeared before me David H. Moseley, to me known to be the City Manager for the City of Federal Way and that said person executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed, if any, is the seal of said municipal corporation.

GIVEN my hand and official seal this _____ day of _____,
200_.

(typed/printed name of notary)
Notary Public in and for the State of
Washington.
My commission expires _____

EXHIBIT 1
King County Parks Transferring to the City of Federal Way

Name of park

Amenities/facilities

EXHIBIT 2
Legal Description
For Kenwood Pit, Parcel # 3833000005

EXHIBIT 3
Permitted Exceptions/Title Report

Those general and special exceptions listed on _____ Title Insurance Company
Commitment for Title Insurance No. _____ dated _____.

EXHIBIT C

Full Operating Schedule for Kenneth Jones Pool, January – June 2003

Winter/Spring/ Schedule:

- Winter Jan 6 – April 20 (Closed for winter break from January 1-5)
- Spring April 21- June 30

Hours:

- Monday through Friday 6am – 9pm (with one hour out for maintenance each day)
- Saturday 8:30am-3pm
- Sundays: closed

Holiday closures: Memorial Day Weekend May 24-26
(may be open for swim team practice during holiday closures)

Maintenance Closures: Additional closures may occur for scheduled or unscheduled maintenance.

Programming: The County plans to initially maintain the same program scheduling as were in place in 2002, however, the County reserved the right to adjust the schedule as it deems reasonable to meet its operating requirements, objectives and budget constraints.

EXHIBIT D

**Kenneth Jones Pool
Estimated 2003 Annual Operating Costs**

Cost Item	Amount
Pool Manager	\$ 65,667
Senior Swim	54,368
Lifeguard	--
½ Pool Operator	33,255
Temporary Staff	93,691
Temporary Benefits	16,396
Electricity	22,548
Water	2,454
Fuel	55,950
Chemicals	5,000
Office Supplies	500
Permits	512
Telecom	1,872
Other	10,000
<i>Total 2003 Operating Costs, before Overhead</i>	<i>\$362,213</i>
County Overhead	\$117,719
Major Maintenance Estimate	15,745
Major Maintenance Overhead	3,700
<i>Total Operating Cost</i>	<i>\$499,377</i>
Estimated Revenue	\$278,100
<i>Total Net Operating Cost for Calendar Year 2003</i>	<i>\$221,277</i>
<i>Estimated Operating Cost for the period from January 1, 2003 through June 30, 2003</i>	<i>\$110,638.50</i>

K:\interlocal\Kenneth Jones 12-11-02