



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

February 24, 2003

Ordinance 14574

Proposed No. 2002-0593.2

Sponsors Edmonds, Pullen and Patterson

1 AN ORDINANCE authorizing the executive to enter into
2 an interlocal agreement between King County and the city
3 of Kent for transfer of the Kent pool to the city; and
4 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 non-mandated 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 Kent pool in Kent.

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 Kent (city) have agreed to terms of an interlocal
17 agreement for the transfer of the Kent 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. The equipment and supplies being conveyed along with the pool are integral to
24 the continued operation and maintenance of the pool and are surplus to the county's
25 needs.

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

28 H. Transfer of the Kent pool under the terms and conditions of the attached
29 agreement will serve an important county purpose by ensuring that the pool will remain
30 open and available to all county residents.

31 SECTION 2. The King County executive is hereby authorized to enter into an
32 interlocal agreement, substantially in the form of the attached agreement, with the city of
33 Kent relating to the transfer of the Kent pool.

34 SECTION 3. For the reasons set forth in section 1 of this ordinance, the county
35 council finds as a fact and declares that an emergency exists and that this ordinance is

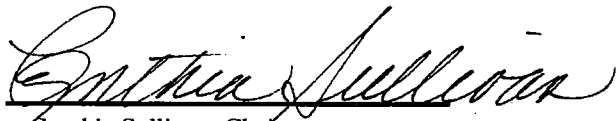
36 necessary for the immediate preservation of public peace, health or safety or for the
37 support of county government and its existing public institutions.

38


Ordinance 14574 was introduced on 12/2/2002 and passed by the Metropolitan King
County Council on 2/24/2003, by the following vote:

Yes: 11 - Ms. Sullivan, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr.
Phillips, Mr. Pelz, Mr. McKenna, Mr. Constantine, Mr. Pullen, Mr. Irons and
Ms. Patterson
No: 0
Excused: 2 - Mr. Gossett and Ms. Hague

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Cynthia Sullivan, Chair

ATTEST:


Anne Noris, Clerk of the Council

APPROVED this 5 day of March, 2003.


Ron Sims, County Executive

RECEIVED
2003 MAR -7 11:45
KING COUNTY COUNCIL

Attachments

- A. Intergovernmental Land Transfer Agreement between King County and the City of Kent, A. Intergovernmental Land Transfer Agreement between King County and the City of Kent, dated February 20, 2003

**Intergovernmental Land Transfer Agreement Between
King County and the City of Kent
February 20, 2003**

**RELATING TO THE OWNERSHIP, OPERATION AND MAINTENANCE
OF THE KENT POOL**

THIS AGREEMENT is made and entered into this day by and between the City of Kent, hereinafter called "City", and King County, hereinafter called "County".

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 County constructed, owns, and operates the Kent Pool (the "Pool") located at 10020 SE 256th Street, Kent, Washington, under the terms of a lease with the Kent School District; and

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 Pool; 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 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 to 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 Title

- 1.1. Within thirty (30) days of execution of this Agreement, the County shall convey to the City by Bargain and Sale Deed all its ownership interest in the Pool, which is more fully described in Exhibits "A" and "B" (the "Property" or the "Pool"). Within thirty (30) days of execution of this Agreement, the County shall also assign the Lease with the Kent School District, (the "Lease"), attached as Exhibit "C", to the City, subject to Section 1.4.

Kent Pool

- 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 shall be conveyed to the County in exchange therefore."

"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 Property 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 facilities within the County or City shall be received in exchange therefore."

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

"The City covenants that if differential fees for non-city residents are imposed for use of the Property, such fees 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; provided, however, that all such preceding covenants shall terminate on May 26, 2011."

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. The assignment shall provide that any costs of the demolition of the Pool at the end of the lease term shall be the responsibility of the Kent School District. The assignment will contain such other terms as are mutually agreeable to the parties.

1.4

The City and County agree that the conveyance and assignment of Lease referenced in paragraph 1.1 are contingent on receiving written approval of the assignment of Lease from the Kent School District. If such written approval is not obtained within thirty (30) days from the execution of this Agreement, the conveyance and assignment shall not be required until thirty (30) days after such written approval is obtained.

1.5

The Property being conveyed includes certain equipment and supplies for the operation and maintenance of the Pool, as described in Exhibit "A". 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, computer equipment used for pool operation, 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 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 and will be removed by the County within thirty (30) days of the conveyance and assignment in Section 1.1.

- 1.6 It is understood that if a city and/or school district constructs a new pool in the future in the general vicinity of the Pool and if: 1) such new pool operates as a public pool in the same manner as required for the Pool by this Agreement; 2) is of comparable size and equivalent recreational value; and 3) the City provides funds for the new pool in lieu of providing continued funding for operation of the Pool, the new pool shall constitute an equivalent replacement facility for the Pool as contemplated by Resolution 34571. When the City withdraws funding from the Pool and the new pool is operational and open to the public, then as between the County and the City, the County will deem a closure of the Pool to be in compliance with the City's obligations to the County to continue operating the pool under this Agreement.

- 1.7 It is understood that the Pool has been "mothballed" effective January 1, 2003. The City has agreed to accept transfer of the Pool and provide annual funds for the operation of the Pool. In the event that the City determines at any time that the costs to operate the Pool exceed its reasonably available funds, the City shall provide 90 days notice to the Pool management group and community and make every reasonable and diligent effort to secure financial support for continued operation. If adequate funding is not secured in the ninety (90) day period, the City shall certify to the County in writing that: (1) it has used all reasonable and diligent efforts to continue to operate the Pool and to secure financial support therefore; (2) funds are not reasonably available to allow the continued operation of the Pool by the City; and (3) the City has been unable to assign its interests in the Pool to another operator or otherwise ensure the continued operation of the Pools as public pool. Thereafter, the City may elect, consistent with applicable legal requirements, to have title to the Pool revert to the Kent School District in accordance with the Assignment of Lease. The City is solely responsible for its actions and determinations under this section.

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. Financial Arrangement

- 3.1 The County will transfer capital funds to the City in an amount of not less than \$50,000 for the purposes described in section 3.1; the amount, if any, over \$50,000 shall be determined by the County in its sole discretion. Capital dollars will be distributed to the City by December 31, 2003, and December 31, 2004, in approximately equal installments. These funds may be used only for the planning, construction, reconstruction, repair, rehabilitation or improvement of the Pool. To the extent that capital funds distributed hereunder are not used for capital improvements at the Pool, they shall be returned to the County.

- 3.2 The County agrees to provide the City with a one-time payment of \$74,130, which amount may be used for the operation and maintenance of the pool or any other purposes related to the Pool. These funds will be distributed to the City no later than March 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 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.

- 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 Property, 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 Property without regard to whether such defect or deficiency was known or discoverable by the City or the County.

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 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.

- 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. Such notice shall in no event be provided more than ten (10) days after discovery. After notice is provided the parties shall make their

best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement. If the City fails to provide timely notice as provided for herein it shall be prohibited from bringing a statutory claim for contribution against the County.

- 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 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 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 or City actions under Section 1.7. 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 or action under Section 1.7 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 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 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 Property.

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.

7. Audits and Inspections

7.1 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.

8. Waiver and Amendments

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

9. Entire Agreement and Modifications

9.1 This Intergovernmental Agreement and its Exhibits sets forth the entire agreement between the parties with respect to the subject matter hereof. It may be supplemented by addenda or amendments, which have been agreed upon by both parties in writing. Copies of such addenda and amendments shall be attached hereto and by this reference made part of this contract as though fully set forth herein.

10. Duration and Authority

10.1 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.

11. Notice

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

King County
Director, Parks Division
KSC-NR-0700
201 South Jackson St.
Seattle, WA 98104-3855

IN WITNESS WHEREOF, the parties have executed this Agreement.

King County

City of Kent
John Hodgson
Director of Parks, Recreation and
Community Services
220 Fourth Avenue South
Kent, Washington 98032

City of Kent

JIM WHITE, Mayor

Date

Date

COUNTY OF KING) : ss.

I hereby certify that on the ____ day of _____, 2003, I know or have satisfactory evidence that JIM WHITE is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument on behalf of the CITY OF KENT as its Mayor, and such execution to be the free and voluntary act of such party for the uses and purposes mentioned in the foregoing instrument.

-Notary Seal Must Appear Within This Box-

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC, in and for the State of Washington
residing at _____
My appointment expires _____

P:\CiviFILES\OpenFiles\0708\Kent-KCPoolIntergovLandTransferAgree.doc

EXHIBIT A
Personal Property to be transferred with Pool

DRAFT

EXHIBIT B
Legal Descriptions

DRAFT