



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

May 20, 2003

Ordinance 14658

Proposed No. 2003-0195.1

Sponsors von Reichbauer and Edmonds

1 AN ORDINANCE authorizing the executive to enter into
2 an interlocal agreement between King County and the city
3 of Federal Way for transfer to the city of local park
4 property known as the Kenwood Pit.
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 develop and maintain the Kenwood
12 Pit property ("property").

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

18 D. The recitals in the agreement set forth relevant facts supporting and explaining
19 the terms of the transfer.

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

22 F. Transfer of the property under the terms and conditions of the attached
23 agreement will serve an important county purpose by ensuring that the park will remain
24 open and available to all county residents.

25 SECTION 2. The King County executive is hereby authorized to enter into an

Ordinance 14658

26 interlocal agreement, substantially in the form of the agreement attached to this
27 ordinance, with the city of Federal Way relating to the transfer of property.
28

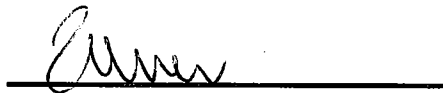
Ordinance 14658 was introduced on 4/28/2003 and passed by the Metropolitan King
County Council on 5/19/2003, by the following vote:

Yes: 12 - Ms. Sullivan, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr.
Phillips, Mr. Pelz, Mr. McKenna, Mr. Constantine, Mr. Gossett, Ms. Hague,
Mr. Irons and Ms. Patterson
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

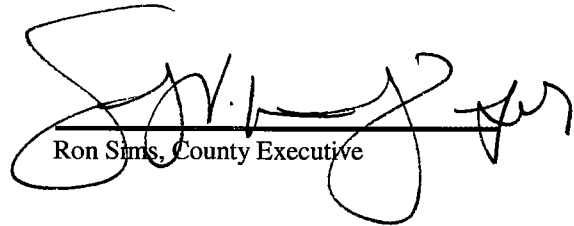

Cynthia Sullivan, Chair

ATTEST:


Anne Noris, Clerk of the Council

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2003 MAY 30 PM 4:24
KING COUNTY COUNCIL

APPROVED this 30th day of may, 2003.


Ron Sims, County Executive

Attachments A. Intergovernmental Land Transfer Agreement Between King County and the City of
Federal Way

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

Kenwood Pit

Undeveloped city park

EXHIBIT 2
Legal Description

Kenwood Pit

Vacated Lots 1-23 and 30-46, Block 1; and Vacated Lots 1-5 and 7-46, Block 2, Kenwood Addition to Tacoma, according to the plat thereof recorded in Volume 7 of Plats, page 1, records of King County, Washington. TOGETHER WITH vacated streets adjoining, less that portion of Walker Street, Cumberland Street and Kenwood Avenue, as shown on the plat of Kenwood Addition to Tacoma, lying Southerly of the Southerly line of Block 1 of said plat of Kenwood Addition to Tacoma and the Easterly and Westerly projection thereof, and Easterly of the Northerly projection of the West line of the East 1/2 of the SE 1/4 of the NW 1/4 of Section 30, Township 21 North, Range 4 East, W.M., in King County, Washington.

SUBJECT TO: An easement for slopes on the South 20 feet of Lot 23, Block 1, dated June 29, 1994, as recorded under Recording No. 9411160706.

Parcel # 3833000005

EXHIBIT 3
Permitted Exceptions/Title Report

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