



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

September 20, 2010

Ordinance 16928

Proposed No. 2010-0301.1

Sponsors Drago

1 AN ORDINANCE authorizing the executive to enter into the
2 Intergovernmental Transfer Agreement Between King County and
3 the Vashon School District Relating to the ownership, operation
4 and maintenance of the Vashon Pool.

5 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

6 SECTION 1. Findings:

7 A. In 1974, King County ("the county") leased property from the Vashon school
8 district ("the district") for forty years, and as part of Forward Thrust, the county
9 constructed the Vashon Pool ("the pool") on the leased property. The pool is an outdoor,
10 summer pool which typically opens every June.

11 B. As a result of the county's fiscal challenges, pool operations could not be
12 funded in the county's 2010 budget.

13 C. The county has reached an agreement with the district that will support the
14 reopening of the Pool to provide recreational opportunities to the public at minimal
15 expense to the county by transferring ownership of the pool to the district.

16 D. The district, in turn, intends to enter into an agreement with the Vashon park
17 district to operate the pool.

18 E. The agreement between the county and the district provides that the county
19 will contribute \$75,000 toward pool operations to provide recreational opportunities to
20 the public.

21 F. The partnership between the county, the Vashon school district and the
22 Vashon park district will enable the pool to continue to provide public recreational
23 opportunities, despite significant fiscal challenges.

24 SECTION 2. The King County executive is hereby authorized to enter into the

- 25 Intergovernmental Transfer Agreement between King County and the Vashon School
- 26 District substantially in the form of Attachment A to this ordinance.
- 27

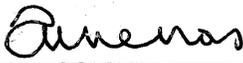
Ordinance 16928 was introduced on 5/17/2010 and passed by the Metropolitan King County Council on 9/20/2010, by the following vote:

Yes: 8 - Ms. Drago, Mr. Phillips, Mr. Gossett, Ms. Hague, Ms. Patterson, Ms. Lambert, Mr. Ferguson and Mr. Dunn
No: 0
Excused: 1 - Mr. von Reichbauer

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Robert W. Ferguson, Chair

ATTEST:


Anne Noris, Clerk of the Council

RECEIVED
2010 SEP 30 PM 4:26
CLERK
KING COUNTY COUNCIL

APPROVED this 30th day of September, 2010.


Dow Constantine, County Executive

Attachments: A. Intergovernmental Transfer Agreement Between King County and the Vashon School District

**Intergovernmental Transfer Agreement Between
King County and the Vashon School District**

Relating to the Ownership, Operation and Maintenance of the Vashon Pool

THIS INTERGOVERNMENTAL TRANSFER AGREEMENT BETWEEN KING COUNTY AND THE VASHON SCHOOL DISTRICT ("Agreement") is entered into by and between KING COUNTY, a political subdivision of the State of Washington (the "County") and VASHON SCHOOL DISTRICT No. 402, a Washington school district (the "District") (collectively referred to herein as the "Parties").

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 has leased certain real property ("the Property") from the District for a term of 40 years pursuant to the Lease Agreement dated October 18, 1974 ("Lease"), which is attached and incorporated herein as Exhibit A; and

WHEREAS, the County has constructed a facility known as the Vashon Pool ("the Pool") on the Property; 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 desires to divest itself of ownership, management, and financial responsibility for parks, open space, recreational facilities and programs inside and near the District boundaries; and

WHEREAS, the County and District have reached an agreement for transfer of ownership of the Pool from the County to the District; and

WHEREAS, the Lease between the County and the District should accordingly be terminated; and

WHEREAS, the County is legally restricted from converting the Pool from its current use without expending funds to replace the Pool; 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 facility is approximately equal to the value of the Pool to the County; and

WHEREAS, the County and the District have determined that the transaction contemplated by

this Agreement is in the best interest of the public;

NOW THEREFORE, in consideration of the mutual promises made in this Agreement and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. Lease Termination and Conveyance of Title

- 1.1. Promptly following execution of this Agreement, King County shall convey to the District by deed all its ownership interest in the Pool as described more fully in Exhibits B and C. The date upon which the deed is recorded shall be known as "Closing."
- 1.2. The deed shall also contain the following specific covenants pertaining to use, which covenants shall run with the Property 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 District agree that the County shall have standing to enforce these covenants, which shall be set forth as follows:
 - A. "The District covenants that for so long as the Pool is operated, the Pool shall be continued to be used for open space, park, or recreation purposes or that other equivalent facilities within the County shall be conveyed to the County in exchange therefore."
 - B. "The District covenants that through December 31, 2014, it shall abide by and enforce all terms, conditions and restrictions in King County Resolution 34571, including that the District covenants that the Pool will continue to be used for the purposes contemplated by Resolution 34571, that the Pool shall not be transferred or conveyed except by agreement providing that such facility shall continue to be used for the purposes contemplated by Resolution 34571, and that the Pool shall not be converted to a different use unless other equivalent lands and facilities within the County or District shall be received in exchange therefore."
 - C. "The District covenants that through December 31, 2014, 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."
 - D. "The District covenants that for so long as the Pool is operated, it will not limit or restrict access to and use of the Pool by non-District residents in any way that does not also apply to District residents. The District further covenants that for so long as the Pool is operated, if differential fees for non-District residents are imposed, they will be reasonably related to the cost borne by District taxpayers to maintain, improve or operate the Pool for parks and recreation purposes."
 - E. "The District covenants that it shall place the preceding covenants in any deed transferring the Pool or a portion of the Pool for public park, recreation or open space

uses. Provided, however, that the covenants in paragraphs B and C above shall terminate on December 31, 2014, which is the end of the calendar year in which the Lease would have originally terminated, and which is the end of the contemplated useful life of the Pool as stated in King County Resolution 34571 §7."

- 1.3 The District and County agree that on the date of Closing, the Lease shall terminate without any further action on the part of the Parties.
- 1.4 The property 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. Any equipment and supplies stored at the Pool for use at other King County facilities will not be transferred.

2. Existing Restrictions, Agreements, Contracts or Permits

- 2.1 The District 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 In consideration of the District's public use covenants in Section 1.2 of this Agreement, and the other terms and conditions of this Agreement, the County agrees to pay the District a one-time public access license fee of \$75,000 to be used solely to support the operations and maintenance of the Pool. The County acknowledges and agrees that the District may contract with the Vashon Park District to operate and maintain the Pool and that the funds provided under this Agreement may be paid to the Vashon Park District for costs of operating and maintaining the Pool, consistent with this Agreement.

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

- 4.1 The District has inspected and knows the condition of the Pool and the Property, and agrees to accept the Pool and 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 Pool and the Property.
- 4.2 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 Pool or the Property, and no official, employee, representative or agent of King County is authorized otherwise.

- 4.3 The District acknowledges and agrees that except as indicated in paragraph 5.2 of this Agreement, the County shall have no liability for, and that the District shall release and have no recourse against the County for, any defect or deficiency of any kind whatsoever in the Pool or the Property without regard to whether such defect or deficiency was known or discoverable by the District 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 District 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 tenancy. The District may not, however, assert such a claim to the extent that the District creates the need for or exacerbates the cost of remediation upon which a statutory claim for contribution is based as a result of the District performing construction activities on the Property, changing the configuration of the Property, or changing the use of the Property.
- 5.3 If the District 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 thirty (30) days after discovery. 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 To the extent permitted by applicable law, King County shall indemnify and hold harmless the District 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 Pool or the Property that occurred prior to Closing, except to the extent that indemnifying or holding the District 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 District or the District and King County, King County shall defend the same at its sole cost and expense and, if final judgment be rendered against the

District and its elected officials, officers, agents and employees or jointly against the District and King County and their respective elected officials, officers, agents and employees, King 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 District from, any liability or responsibility which arises in whole or in part from the existence or effect of District resolutions, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such District resolution, rule or regulation is at issue, then to the extent permitted by applicable law, the District shall defend the same at its sole expense and, if judgment is entered or damages are awarded against the District, the County or both, the District shall satisfy the same, including all chargeable costs and attorneys' fees.
- 6.3 To the extent permitted by applicable law, the District 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) that occur before October 19, 2014, and which are caused by or result from a negligent act or omission of the District, its officers, agents and employees in performing obligations pursuant to this Agreement, and/or (ii) arising from those occurrences related to the Pool or the Property that occurred on or after Closing, and before October 19, 2014, 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 King County or King County and the District, then to the extent permitted by applicable law the District shall defend the same at its sole cost and expense and, if final judgment be rendered against King County and its elected officials, officers, agents and employees or jointly against King County and the District and their respective elected officials, officers, agents and employees, the District 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 Pool or the Property.
- 6.5 Each Party agrees that its obligations under this Article 6 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. The District's waiver under this Section 6.5 is effective to the extent permitted by applicable law.

7. Audits and Inspections

- 7.1 Until December 31, 2020, any of either Party's records related to any matters covered by

this Agreement, and 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 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 Agreement as though fully set forth herein.

10. Effective Date; 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:

If to the County:

King County
Kevin Brown, Director
King County Parks and Recreation Division
201 South Jackson Street, Suite 700
Seattle, WA 98104

If to the District:

Vashon School District No. 402
Michael Soltman, Superintendent
PO Box 547
Vashon, WA 98070

12. Legal Relations

12.1 The Parties to this Agreement execute and implement this Agreement to end their relationship as lessor and lessee. No partnership, joint venture or joint undertaking shall be construed from this Agreement. This Agreement is binding upon and shall inure to the benefit of each Party hereto, its successors and assigns. The District may not assign this Agreement or any rights hereunder without the County's prior written consent. This Agreement creates no right, privilege, interest, duty, obligation, or cause of action in any person or entity not a party to it.

13. Governmental and Police Powers Not Affected

13.1 Nothing in this Agreement will be considered to diminish the governmental or police powers of the County.

14. Choice of Law, Venue and Jurisdiction; Attorney Fees

14.1 This Agreement and all amendments thereof shall be governed by and construed in accordance with the laws of the State of Washington without reference to its conflicts of law provisions or choice of law rules. In the event of any litigation hereunder, the Superior Court of King County, Washington shall have the exclusive jurisdiction and venue. The Parties agree to submit to the personal jurisdiction of that court. The prevailing Party in any dispute arising out of or relating to the interpretation of this Agreement, including those disputes brought in Superior Court and/or on appeal, shall be entitled to reasonable attorney's fees and costs including expert witness fees.

15. Negotiation and Construction

15.1 This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the Parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either Party. The captions of any articles, paragraphs or sections contained herein are for purposes of convenience only and are not intended to define or limit the contents of said articles, paragraphs or sections. If there is any conflict between the terms and provisions of this Agreement, and the terms and provisions of the deed executed to convey the Pool, then the terms and provisions of the deed shall control. All Parties acknowledge and represent, as an express term of this Agreement, that they have had the opportunity to obtain and utilize legal review of the terms and conditions outlined in this Agreement, although each Party must determine if they wish to obtain and pay for such legal review. Each Party shall be and is separately responsible for payment of any legal services rendered on their behalf regarding legal review of the terms found in this Agreement.

16. Severability

16.1 If any provision of this Agreement is found to be invalid, illegal or unenforceable by a court of competent jurisdiction, such provision shall be stricken and the remainder of this Agreement shall remain in full force and effect unless striking such provision shall materially alter the intention of the Parties.

17. Authority to Sign

17.1 Each of the persons whose signatures appear below acknowledges and agrees that they are duly authorized to execute this Agreement on behalf of the agency or entity that they represent.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

King County

Vashon School District

King County Executive

Superintendent

Date

Date

Approved as to Form:

Approved as to Form:

King County
Deputy Prosecuting Attorney

Date

Date

NOTARY BLOCKS APPEAR ON THE FOLLOWING PAGE

Exhibit A

1974 Lease Between King County and Vashon School District No. 402

DC0202
LEASE AGREEMENT

THIS LEASE made in quadruplicate this 18th day of October,
1974 by and between KING COUNTY, WAHSINGTON, a political subdivision
of the State of Washington, Lessee, and VASHON ISLAND SCHOOL DISTRICT
NO. 402, King County, Washington, a municipal corporation of the
State of Washington, Lessor:

WITNESSETH:

In consideration of the covenants and agreements of the Lessee
hereinafter set forth, the School District does by these presents
sub lease unto King County certain real property described as follows:

That portion of the NW 1/4 of the SW 1/4 of Section
5, Township 22 North, Range 3 East of W.M., on Vashon
Island, in King County, Washington, described as follows:

Commencing at the west quarter corner of said section;
thence South 0° 09' 45" West along the west line of said
section 1,328.25 feet to the monumented intersection of the
centerline of 99th Avenue Southwest with the centerline of
Southwest 204th Street' thence North 89° 55' 33" East along
the centerline of Southwest 204th Street 878.98 feet; thence
North 0° 08' 53" East 30.00 feet to the Point of Beginning
on the northerly margin of said street; thence continuing North
0° 08' 53" East 123.33 feet; thence North 89° 55' 33" East
284.48 feet; thence South 0° 08' 53" West 123.33 feet to the
northerly margin of Southwest 204th Street; thence South 89°
55' 33" West along said northerly street margin 284.48 feet to
to the Point of Beginning. Containing 0.8 acres more or less.
All in King County, Washington.

In addition to the property sub leased, the School District will provide all convenient and necessary easements for utilities, ingress and egress.

The term of such lease shall be for a period of forty (40) years from the date above written. Upon expiration of said lease term, Lessee shall have an option to renew such lease upon terms to be negotiated between the parties, it being the intent at this date that the lease continue for at least the useful life of the building and structures to be located on the premises.

King County has examined and accepts the premises in the present condition and for the purpose of immediately constructing thereon a major outdoor swimming pool.

King County shall be responsible for all charges for utilities, governmental charges or taxes that should be levied against the property and shall keep the property in good repair and insured against all damage and liability resulting from the use thereof.

King County shall, when facilities on the leased premises are not to be used by King County, permit the School District to use such facilities subject to a separate written Use Agreement between the two agencies, pursuant to this agreement.

In addition to the property sub leased, lessee shall have the exclusive use during pool operation hours, for the term of this lease, of 62 parking stalls within the Vashon Island High School parking lot, said stalls to be designated at time of final pool siting.

In addition to the exclusive use of the sixty-two (62) parking stalls, lessee shall have the right to share with the lessor the use of the remainder of the parking lot, during pool operation hours and for the term of this lease, as pool requirements demand.

The lessee shall provide reasonable directional signs in the parking lot adequately informing the public of the permitted uses of the parking lot for swimming pool use.

King County agrees to hold the School District harmless and to indemnify and defend the School District against any claim or liability for damage to any person or property and costs incident thereto arising with respect to the leased premises, except when such damage is a result of School District sponsored or controlled activities on the leased premises or where such damage is attributable to some act or omission of the School District.

The School District agrees to hold King County harmless and to indemnify and defend King County against any claims or liability for damage to any person or property and costs incident thereto caused by the negligence of the School District or as a result of School District sponsored or controlled activities on the leased premises, and where such damage is not attributable to some act or omission of King County.

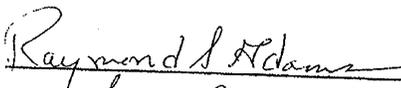
IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands and seals the date first above written.

KING COUNTY:

VASHON ISLAND SCHOOL
DISTRICT NO. 402



John D. Spellman
County Executive



Raymond S. Adams
Supt.
(Title)

Approved as to Form and Legality:



Deputy Prosecuting Attorney

STATE OF WASHINGTON)
)
COUNTY OF KING) ss.

On this 26th day of Sept., 1974, before me personally appeared Raymond S. Adams, to me known to be the (president, vice president, secretary, treasurer, or other authorized officer or agent, as the case may be) of the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

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

Mary Dally
NOTARY PUBLIC in and for the State
of Washington, residing at
Vashon, Wash.

Exhibit B

Pool Transferring to the Vashon School District

Name of facility

Amenities/facilities

Vashon Pool

Aquatic Facility

Exhibit C

Legal Descriptions

Vashon Pool. Those real property improvements, including fixtures and equipment, located at:

That portion of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 5, Township 22 North, Range 3 East of W.M., on Vashon Island, in King County, Washington, described as follows:

Commencing at the west quarter corner of said section; thence South $0^{\circ} 09' 45''$ West along the west line of said section 1,328.25 feet to the monumented intersection of the centerline of 99th Avenue Southwest with the centerline of Southwest 204th Street; thence North $89^{\circ} 55' 33''$ East along the centerline of Southwest 204th Street 878.98 feet; thence North $0^{\circ} 08' 53''$ East 30.00 feet to the Point of Beginning on the northerly margin of said street, thence continuing North $0^{\circ} 08' 53''$ East 123.33 feet; thence North $89^{\circ} 55' 33''$ East 284.48 feet; thence South $0^{\circ} 08' 53''$ West 123.33 feet to the northerly margin of Southwest 204th Street; thence South $89^{\circ} 55' 33''$ West along said northerly street margin 284.48 feet to the Point of Beginning. Containing 0.8 acres more or less. All in King County, Washington.