



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

December 17, 2002

Ordinance 14557

Proposed No. 2002-0601.2

Sponsors Edmonds

1 AN ORDINANCE authorizing the executive to enter into an
2 interlocal agreement between King County and the Highline
3 School District No. 401 and the cities of Des Moines,
4 Normandy Park and SeaTac regarding the operation of the
5 Mount Rainier pool; and declaring an emergency.
6
7

8 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

9 SECTION 1. Findings:

10 A. King County ("county") and the Highline School District No. 401 and the
11 cities of Des Moines, Normandy Park and SeaTac (the district and the cities are
12 collectively referred to as "the jurisdictions") have agreed to terms for an interlocal
13 agreement for the operation of the Mount Rainier pool.

14 B. The recitals in the agreement set forth relevant facts supporting and explaining
15 the terms of the agreement.

16 C. King County and the jurisdictions have agreed that the county will operate the
17 Mount Rainier pool for the period of January 1, 2003, to December 31, 2003.

18 D. Continued operation of the Mount Rainier pool under the terms and conditions
19 of the attached agreement will serve an important county purpose by ensuring that the
20 pool will remain open and available to all county residents.

21 E. The fiscal crisis facing the county requires that the pool be mothballed and
22 unavailable for public use at the end of this year unless the agreement is in effect before
23 that time. As a result, immediate authorization for the execution of the agreement is
24 necessary and is in the best interest of the public and this ordinance must be adopted on
25 an emergency basis.

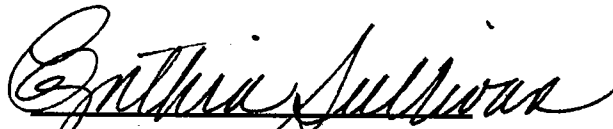
26 SECTION 2. The King County executive is hereby authorized to enter into an
27 interlocal agreement, substantially in the form of the attached agreement, with the
28 Highline School District No. 401 and the cities of Des Moines, Normandy Park and
29 SeaTac relating to the operation of the Mount Rainier pool.

30 SECTION 3. For the reasons set forth in section 1 of this ordinance, the county
31 council finds as a fact and declares that an emergency exists and that this ordinance is
32 necessary for the immediate preservation of public peace, health or safety or for the
33 support of county government and its existing public institutions.
34

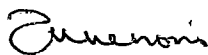
Ordinance 14557 was introduced on 12/9/2002 and passed by the Metropolitan King
County Council on 12/16/2002, by the following vote:

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

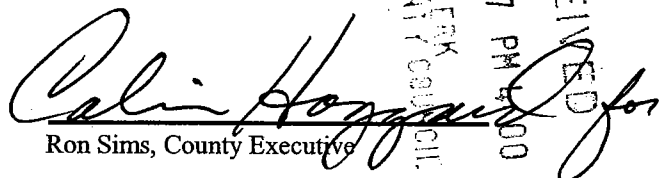

Cynthia Sullivan, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 17th day of December, 2002.


Ron Sims, County Executive

RECEIVED
2002 DEC 27 PM 4:00
CLERK
KING COUNTY COUNCIL

Attachments A. Pool Operation Agreement, 12-12-02

Document dated: 12-12-02

POOL OPERATION AGREEMENT

This Pool Operation Agreement ("Agreement") is entered into this ___ day of _____, 2002 by and between King County ("County") and the City of Des Moines, the City of Normandy Park, the City of SeaTac, and the Highline School District No. 401 (the "District") (the foregoing Cities, the District and the County are collectively referred to herein as the "Parties"). The Parties agree as follows:

1. RECITALS

- 1.1 The County has, since 1974, owned, operated and maintained the pool (the "Pool") located in the City of Des Moines, on property leased to the County by the District pursuant to a lease dated March 6, 1974 (the "Lease").
- 1.2 The County has determined that it is no longer able to fund the operation of in-city parks and pools in accordance with past practices, and is engaged in a transition of certain portions of its parks and recreation system consistent with this situation. The County has therefore worked over the past several months with impacted cities and other jurisdictions in an attempt to divest itself of these in-city facilities.
- 1.3 The Parties desire to find a long-term solution for the continued operation of the Pool.
- 1.4 The County is willing to continue to manage, operate and maintain the Pool for the 2003 calendar year, and the other Parties hereto are willing to provide funds to subsidize a portion of the costs of such operation, management and maintenance, all as more particularly set forth in this Agreement.
- 1.5 The Parties are committed to working towards a long-term solution (without here determining its precise nature), over the course of the term of this Agreement, which would allow continued operation of the Pool for public benefit.
- 1.6 The County and the District have heretofore entered into agreements governing the District's use of the Pool, specifically, Agreement Regarding Active Recreational Programs dated June 7, 1999 (the "Active Recreation Agreement") and a Pool Use Agreement dated July 1, 2002 (the "Pool Use Agreement").

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

2. POOL OPERATIONS

- 2.1. Consistent with this Agreement, sound management practices, staffing limitations, available funds and applicable legal requirements, the County shall use its best efforts to operate the Pool generally in the same manner, but with decreased operating hours as compared to 2002 and with attendant schedule changes, as further described in Exhibit A, and with pool user fees increased approximately 50% above 2002 levels. The County shall further use its best efforts to operate the Pool in a manner that will result in the Actual Annual Net Costs (as defined in Section 3.3) of operating the Pool equaling the Estimated Annual Payment (as defined in Section 3.3). 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. 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.

3. FUNDING

- 3.1. In exchange for the County's continued operation of the Pool in accordance with Section 2 above, the City of Des Moines, on behalf of the other Cities and the District who have collectively entered into a separate cost sharing agreement for this purpose, agrees to coordinate, collect and disburse the payment to the County the total sum of \$217,620 (the "Estimated Annual Payment"), payable in four roughly equal Quarterly Payments made on or before January 15, April 15, July 15, and October 15 during the term of this Agreement as set forth below; provided, however, by agreeing to coordinate, collect and disburse the payments the City of Des Moines is not agreeing to sole responsibility for making the payments. These payments are calculated based on the need for the County to retain a sufficient portion of the Mothball Cost, as defined in Section 3.2.

<u>Payment Date</u>	<u>Quarterly Payment Amount</u>
January 15, 2003	\$58,405
April 15, 2003	\$58,405
July 15, 2003	\$58,405
October 15, 2003	\$42,405

3.2. The "Mothball Cost" is defined as that amount of funding necessary to ensure that the Pool, while not open to the public, can be re-opened for public use at minimal expense if operating dollars are found. "Mothballing" thus requires that the Pool remain filled with water, the filters, pumps, heaters and general Pool equipment remain on, and the building maintained by staff. The Mothball Cost for the Pool for the full year 2003 has been determined by the County to be \$78,400. The Mothball Cost for the balance of the year at each calendar quarter is calculated as follows:

<u>Date</u>	<u>Mothball Cost for balance of year</u>
March 1	\$62,800
June 1	\$47,200
September 1	\$31,600

3.3. The Estimated Annual Payment has been calculated by the County as set forth in Exhibit B, attached hereto. The Estimated Annual Payment is equal to the estimated net operating cost of the Pool under a reduced operating schedule over the course of 2003. The net operating cost of the Pool includes all applicable direct costs, County overhead costs and non-routine maintenance costs associated with the Pool, *less* (1) all revenues generated at the Pool and accruing to King County from any authorized source, and (2) the Mothball Cost. The "Actual Net Operating Cost" is the net operating cost, as defined in the preceding sentence, as actually experienced by the County over the term of this Agreement.

3.4. In the event the County is successful in reducing Actual Net Operating Costs over the term of this Agreement below the amount of the Estimated Annual Payment specified in Section 3.1 above, the County will refund the difference to the City of Des Moines within 45 days after the expiration of this Agreement.

3.5. If at any time the County in its sole discretion, determines that the Actual Net Operating Costs of the Pool exceed or are likely to exceed the Estimated Annual Payment, then the County will notify all other Parties 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 (which may include closure) that will be required absent additional funding; and (3) the amount of additional funding that would be necessary to avoid these operational changes 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 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 Cities and the District, acting through the City of Des Moines, will have 30 days to respond in writing as to whether they wish to provide additional funding to avoid the operational changes or other actions. If the Cities and the District, through the City of Des Moines, notify the County that they will pay or cause to be paid additional funding in an amount specified by the County, such additional funding shall be paid in equal installments at the remaining quarterly payment dates or within two weeks if no such remaining quarterly payment date remains. If the City of Des Moines, on behalf of the Cities and the District, notifies the County that the Cities and the District will not provide additional funding, or does not respond within 30 days, the County shall proceed to make the operational changes as it deems in its sole discretion, reasonably exercised, are required to address the increased costs and/or funding shortfall. Before the 30-day response deadline, the Cities and the District may suggest operations alternatives to address the funding shortfall, which the County may accept or reject in its sole discretion. The Cities and the District waive and release any and all claims against the County with respect to operational changes at the Pool under this Agreement, provided however, that this shall not be construed as a waiver of any claims the District may have against the County under the Lease.

4. TERM

- 4.1. The term of this Agreement shall commence on the date first written above and shall expire on December 31, 2003, unless earlier terminated as provided herein.
- 4.2. If the City of Des Moines, on behalf of the Cities and the District, has not made any of the quarterly payments or other payments due pursuant to Section 3.5 within 10 days after their due date, the County shall send by registered mail and telefax to the City of Des Moines and all other Parties hereto a written notice that such payment is overdue, and if payment is not made within 5 business days after said notice, the County may terminate this Agreement by written notice to the other Parties hereto.
- 4.3. The County may terminate this Agreement at any time in case of an event of *force majeure* that results in a complete or substantially complete destruction of the Pool or that renders the pool substantially unusable. The other parties may terminate for such an event of *force majeure* only if the District and all Cities who are parties to this Agreement unanimously agree to do so and a written notice of such termination signed by all such parties is provided to the County. For purposes of this Agreement, "*force majeure*" means any Act of God,

earthquake, flood, fire or other casualty beyond the reasonable control of the party claiming the benefit of the event.

- 4.4. Other than a refund pursuant to Section 3.4, the Cities and the District shall not be entitled to payment of any other costs or damages arising from the expiration or termination of this Agreement or any discontinuation of operations or closure of the Pool, provided, however, that this shall not be construed as a release or waiver of any claims the District may have against the County under the Lease. The Cities and the District waive and release any and all claims against the County for expiration or termination of this Agreement in accordance with its terms, provided, however, that this shall not be construed as a release or waiver of any claims the District may have against the County under the Lease.
- 4.5. The County may terminate this Agreement at any time prior to December 31, 2003, if Pool ownership is transferred to another entity, provided, however, that this shall not relieve the County from having to obtain the District's consent to an assignment of the Lease.
- 4.6. The Parties agree to work over the course of 2003 to identify a means whereby the Pool can remain open to the public in 2004 and beyond, understanding that the County desires to transfer title to the Pool to another entity in order to assure long-term stability for the Pool. The Parties agree to examine other public or non-profit ownership models, options for public vote to provide funding, and other reasonable means to accomplish their common objective to ensure continued public use of the Pool. The Parties obligations under this section 4.6 shall survive early termination of this Agreement.
- 4.7. The County agrees that it will continue to track pool users by address in the same manner as conducted in 2002, by securing addresses of persons who register for classes or rentals of the Pool, and will provide this information to the other Parties on a quarterly basis. The County will also allow the parties to conduct their own pool user surveys during mutually agreed upon time periods and in a manner that does not interfere with pool operations.

5. LEGAL RELATIONS

- 5.1. It is understood and agreed that this Agreement is solely for the benefit of the Parties and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement.

- 5.2. The County is sole operator of the Pool for the 2003 calendar year, and as such, the County shall be responsible for any liability arising from its negligent acts or omissions in operating the Pool, except to the extent such liability is caused by another Party's negligence or willful misconduct. This section 5.2 shall not be applicable between the County and District with respect to any claims, demands, lawsuits, suits, penalties, losses, damages, judgments, attorneys' fees, costs or liability arising from the District's use of the Pool. All such matters with respect to the District shall be governed by the Pool Use Agreement and Active Recreation Agreement.
- 5.3. In the event the Cities and District, on the one hand, and the County, on the other hand, incur attorney's fees, costs or other legal expenses to enforce the provisions of this Agreement against the other party, all such fees, costs and expenses shall be recoverable by the prevailing party.
- 5.4. This Agreement shall be interpreted in accordance with the laws of the State of Washington. The Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.
- 5.5. This Agreement shall not affect or amend any of the terms of the Lease, the Active Recreation Agreement or the Pool Use Agreement between the County and the District. Neither this Agreement, nor its termination, shall in any way relieve the County or the District of their respective rights and obligations under the Lease, the Active Recreation Agreement, or the Use Agreement, all of which rights and obligations shall remain in full force and effect. By the execution of this Agreement, the District is not consenting or agreeing in advance that mothballing or closure of the Pool is not a default under the Lease, nor is the County agreeing or conceding that it does not have the right to mothball or close the Pool under the Lease.

6. NOTICE

- 6.1. Any notice, writing or payment given under this Agreement shall be in writing and given by sending such notice, writing or payment by registered mail, return receipt requested, with postage prepaid, addressed as follows, or at such other address as the party to be notified shall have last directed in writing, or by serving said notice personally. The effective date of notice, writing, or payment shall be the date of personal service or the date of receipt as shown on the return receipt, as applicable.
- 6.2. The agency contacts for this Agreement are:

For King County:

Bob Burns, Acting Manager,
King County Parks Division,
Dept. of Natural Resources and Parks
King Street Center, 7th Floor
201 S. Jackson
Seattle, WA 98104

For the City of Des Moines

Patrice Thorell
City Parks & Recreation Director
21630 11th Ave. SE
Des Moines WA 98198

For the City of Normandy Park

Merlin MacReynold
City Manager
801 SW 174th Street
Normandy Park WA 98166

For the City of SeaTac:

Bruce Rayburn
City Manager
4800 South 188th Street
SeaTac WA 98188

For Highline School District No. 401:

Dr. Joseph McGeehan
Superintendent
15675 Ambaum Blvd. SW
Burien WA 98166

6.3 Any Party may, from time to time, by notice in writing served upon the other party as required herein, designate an additional and/or a different mailing

address or an additional and/or different person to whom such notice, writing, payment, request, report or other communication are thereafter to be addressed.

7. MISCELLANEOUS

7.1. **Entire Agreement.** Subject to Section 5.5, this Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof.

7.2. **Amendment.** This Agreement may be amended at any time only by a written mutual agreement of the Parties provided that said amendments must be approved and signed by the same responsible parties, or their designees or successors in interest who signed the original Agreement.

7.3. **Waiver.** The waiver by any party of any breach of any term, covenant, or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same term, covenant, or condition of this Agreement.

7.4. **Severability.** If any provision of this Agreement shall be held invalid, the remainder of this Agreement shall not be affected and shall remain in full force and effect.

7.5. **Counterparts.** This Agreement may be executed in separate counterparts, each of which will be deemed an original and all of which collectively shall constitute one document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

KING COUNTY:

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM this _____ DATED this _____ day of
day of, 2002. _____, 2002.

CITY OF DES MOINES

By _____
Linda Marousek
City Attorney of Des Moines

By _____
Tony Piasecki
Its City Manager
At the direction of the Des Moines
City Council by resolution regularly
passed at an open public meeting
on _____, 2002.

APPROVED AS TO FORM this _____
day of, 2002.

DATED this _____ day of
_____, 2002.

CITY OF NORMANDY PARK

By _____
Susan Sampson
City Attorney of Normandy Park

By _____
Merlin MacReynold
Its City Manager
At the direction of the Normandy
Park City Council by resolution
regularly passed at an open public
meeting on
_____, 2002.

APPROVED AS TO FORM this _____
day of, 2002.

DATED this _____ day of
_____, 2002.

CITY OF SEATAC

By _____
Robert L. McAdams
City Attorney of SeaTac

By _____
Bruce Rayburn
Its City Manager
At the direction of the SeaTac City
Council by resolution regularly

passed at an open public meeting on _____, 2002.

APPROVED AS TO FORM this _____ day of _____, 2002.

DATED this _____ day of _____, 2002.

HIGHLINE SCHOOL DISTRICT
No. 401

By _____
William Green
Attorney for Highline School District

By _____
Dr. Joseph McGeehan
Its Superintendent
At the direction of the Highline
School Board by resolution regularly
passed at an open public meeting on
_____, 2002

Exhibit A
2003 Reduced Operating Schedule for Mount Rainier Pool

Winter/Spring/Fall Schedule

- Winter: January 6 – April 20 (Closed for Winter Break from January 1-5)
- Spring: April 21 – June 27
- Fall: September 1 – December 21

Hours:

Monday through Thursday, 11:30 a.m. – 9:00 p.m.
 Friday: 11:30 a.m. – 8:00 p.m.
 Saturday: 11:30 a.m. – 3:30 p.m.
 Sundays: Closed

Summer Schedule

- Summer: June 28 – August 31, 2003

Hours:

Monday through Thursday, 9:00 a.m. – 9:00 p.m.
 Friday: 9:00 a.m. – 8:00 p.m.
 Saturday: 9:00 a.m. – 3:00 p.m.
 Sundays: Closed

Holiday Closures: Memorial Day Weekend – May 24-26
 4th of July – July 4-6
 Labor Day Weekend – August 30 – September 1
 Thanksgiving November 27 – 30
 Christmas Break – December 22 – December 31
 (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 B

**Mount Rainier Pool
Estimated 2003 Operating Costs
Reduced Schedule**

Cost Item	Amount
Pool Manager	\$65,667
Share Benefits	--
Senior Swim	54,368
Lifeguard	--
½ Pool Operator	33,255
Temporary Staff	67,090
Temporary Benefits	11,740
Electricity	35,844
Water	10,539
Fuel	50,648
Chemicals	2,500
Office Supplies	465
Permits	565
Telecom	674
Other	7,500
<i>Total 2003 Operating Costs, before Overhead</i>	<i>\$340,855</i>
County Overhead	\$110,778
Major Maintenance Estimate	15,745
Major Maintenance Overhead	3,700
<i>Total Operating Cost</i>	<i>\$471,078</i>
Estimated Revenue	\$175,058
Mothball Cost contributed by King County	\$ 78,400
<i>Total Net Operating Cost/Estimated Annual Payment</i>	<i>\$217,620</i>