

POOL OPERATION AGREEMENT

This Pool Operation Agreement ("Agreement") is entered into this ___ day of _____, 2002 by and between King County, ("County") and Enumclaw, ("City") both Washington municipal corporations. The parties agree as follows:

1. RECITALS

- 1.1 King County has determined that it is no longer able to fund the operation of in-city parks and pools, and is engaged in a transition 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.
- 1.2 In the interest of increasing the likelihood of finding a long-term solution for the in-city pools that does not involve County ownership or operation of the pools, the County has offered, as a short-term alternative to title transfer, to enter into agreements of up to one-year in length under which third parties will provide operating subsidy to the County to operate a pool.
- 1.3 Because the County is committed to continuing to find a long-term operating solution to the in-city pools, it is committed to ensuring that the Pool at a minimum remains at least in "mothballed" condition for the course of the year 2003, or until voters have had an opportunity to accept or reject a funding measure for the pool, whichever comes first.
- 1.4 Given that the County has determined it must get out of the business of providing in-city parks and pools, a long-term pool solution from the County's perspective requires the transfer of ownership of the pools away from King County and the provision of ongoing expenses for the operation of the pools to be provided through means other than the County general fund budget. The County and the City are committed to working towards such a solution (without here determining its precise nature) over the course of the term of this Agreement.
- 1.5 Because the Enumclaw Pool ("Pool") provides a benefit to the City and its residents, the City is willing to provide funds to the County to operate the Pool on an interim basis of three months to allow for the City to conduct a February 2003 election to raise local property tax dollars to support pool operation, it being the

intention of the City and the County to transfer title to the Pool and the Enumclaw Golf Course. It is understood by the parties that if the election is unsuccessful and the City does not take title to the Pool, the County will close the Pool and the Golf Course will not transfer to the City.

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 endeavor to operate the Pool in a manner that will result in the Actual Net Costs (as defined in Section 3.2) of operating the Pool equaling the Estimated Payment, (as defined in Section 3.1). Operational polices 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. Unless it is determined by the County in its sole discretion to be impracticable for financial or other reasons, the County intends to operate the Pool generally in the same manner, and with the same hours, as the Pool was operated in 2002, but with pool user fees increased approximately 50% above 2002 levels. 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.

2.2. The County shall be relieved of its obligations hereunder to the extent performance is made impracticable by any event of *force majeure*, including without limitation, acts of god. If an event of *force majeure* occurs, the City or the County may terminate this Agreement, consistent with Section 5.

3. FUNDING

3.1. In exchange for the County's continued operation of the Pool during the term of this Agreement, the City agrees to pay or cause to be paid to the County the total sum of \$66,290.00 (the "Estimated Payment"), payable in two equal Payments made on or before January 15 and February 15 as set forth below.

| <u>Payment Date</u> | <u>Payment Amount</u> |
|---------------------|-----------------------|
| January 15 | \$33,145 |
| February 15 | \$33,145 |

- 3.2. The Estimated Payment has been calculated by the County and is represented in Exhibit A. In sum, the Estimated Payment is equal to the estimated net operating cost of the Pool during the first quarter 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* all revenues generated at the Pool and accruing to King County from any authorized source. The "Actual Net Operating Cost" is the net operating cost, as defined in the preceding sentence, as actually experienced by the County over the term of this Agreement.
- 3.3. 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 Payment specified in Section 3.1 above, the County shall refund the difference to the City within 45 days after the expiration or termination by the County of this Agreement.
- 3.4. If at any time the County in its sole discretion determines that the Actual Net Operating Costs of the Pool are or are likely to exceed the Estimated Payment, then the County will notify the City of this in writing, describing (1) the costs that are or are likely to be greater than anticipated (or revenues that are or are likely to be less than anticipated) and the reason therefor; (2) the operational changes that will be required absent additional funding; and (3) the amount of additional funding that would be necessary to avoid these operational changes (which may include closure) or other actions. The County shall not be required to further increase user fees in order to mitigate an increase in net operating costs, it being understood that County pool fees will be uniform across the County and that a 50% user fee increase will be imposed at the beginning of year 2003. The City will have 30 days to respond in writing as to whether it wishes to provide additional funding to avoid the operational changes or other actions. If the City determines to provide additional funding in an amount specified by the County, such additional funding shall be paid in equal installments on the remaining payment date(s). If the City determines not to 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 are required to address the increased costs and/or funding shortfall. On or before the 30-day response deadline, the City may suggest operations alternatives to address the funding shortfall, which the County may accept or reject in its sole discretion. The City waives and releases any and all claims against the County with respect to operational changes. In the interests of time and ensuring continuity of pool operations, the County's explanation of the cost increases, and options shall be deemed conclusive.

4. TERM

- 4.1. The term of this Agreement shall commence on the date first written above and shall expire on March 31, 2003. The term of this Agreement has been established based on the City's estimate of the time it will take for the City to be prepared to take over the Pool if the February 2003 election is favorable.
- 4.2. If the City has not made a payment within 10 days after its due date, the County may terminate this Agreement without further notice to the City.
- 4.3. The County may terminate at any time in case of a force majeure event.
- 4.4. Other than a refund pursuant to Section 3.3, the City shall not be entitled to payment of any other costs or damages arising from the expiration or termination of this Agreement or pool closure. The City waives and releases any and all claims against the County for expiration or termination of this Agreement or any discontinuation of operations or closure of the Pool.
- 4.5. In the event the February election is unsuccessful, the parties agree to work over the course of 2003 to identify a means whereby the Pool can be re-opened to the public in 2004 and beyond, understanding that the County's position is that title to the Pool must transfer to another entity in order to assure long-term stability for the Pool, and that the County does not have amounts budgeted to mothball the pool for 2004. 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 shall survive the termination or expiration of this Agreement.

5. LEGAL RELATIONS.

- 5.1. It is understood and agreed that this Agreement is solely for the benefit of the parties hereto 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 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 the City's negligence or willful misconduct.

5.3. In the event either party incurs 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.

6. TRANSFER OF POOL AND GOLF COURSE

6.1. Following certification of the February 2003 election, the City shall immediately notify the County in writing of its intent regarding ownership of the Pool.

6.2. The parties agree that if the election is successful that the Pool shall promptly be transferred by the County to the City pursuant to an interlocal agreement and that the Enumclaw Golf Course shall also be promptly transferred by the County to the City pursuant to an interlocal agreement. As evidenced in previous drafts of these agreements, the County is offering to transfer \$50,000 in capital funds to the City that can be used for improvements at the Pool, and ownership of the Golf Course. In order to effect a prompt and seamless transfer, the parties shall complete the interlocal agreements prior to the February 2003 election.

6.3. Failure of the February election shall not preclude the parties from otherwise agreeing to transfer the Pool and Golf Course as anticipated in Section 6.2.

7. NOTICE

7.1. Any notice under this Agreement shall be in writing and given by sending such notice 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 shall be the date of personal service or the date of receipt as shown on the return receipt, as applicable

7.2. The agency contacts for this Agreement are:

For King County:
Manager, Parks Division

For the City of Enumclaw:
City Administrator

7.3 Either 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, request, report or other communication are thereafter to be addressed.

8. ENTIRE AGREEMENT

8.1 This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof.

8.2 This Agreement may be amended at any time only by mutual agreement of the parties, provided that said amendments must be approved and signed by the same responsible parties, or their designees, that signed the original Agreement.

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

KING COUNTY

CITY OF ENUMCLAW

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Estimated cost to operate Enumclaw Pool for 1st Quarter, 2003**Expenditures**

| | | |
|---------------------------|---------------------|--|
| Pool Manager | \$16,416.75 | 3 months of a Pool Manager with benefits |
| Sr Swim | \$13,592.00 | 3 months of a Senior Swim with benefits |
| Pool Op | \$16,627.50 | 3 months of a Pool Operator with benefits |
| Temporary Staff | \$ 28,000.00 | based on 235 hrs per week for 12 weeks |
| Temporary Benefits | \$ 4,900.00 | 17.50% |
| Utilities | \$ 18,000.00 | based on the 2002 actuals for 1st quarter |
| Chemicals | \$ 1,000.00 | based on the 2002 actuals for 1st quarter |
| Misc Repairs | \$ 2,000.00 | estimate based on 2002 actuals for 1st quarter |
| Misc Supplies | \$ 2,000.00 | estimate based on 2002 actuals for 1st quarter |
| Total | \$102,536.25 | |
| | | |
| Admin Overhead - 32.5% | \$33,324.28 | |
| Maintenance with overhead | \$4,861.24 | |
| Total Expenditures | \$140,721.77 | |

Revenue

| | |
|----------------------------|--------------------|
| Drop In Sales | \$24,515.46 |
| Lesson Registration | \$ 22,514.30 |
| Facility Rental | \$ 14,997.00 |
| SubTotal | \$62,026.76 |
| | |
| Total 1st qtr 2002 Revenue | \$62,026.76 |
| x 50% fee increase | \$31,013.38 |
| Sub total | \$93,040.14 |
| less 20% drop off | \$18,608.03 |
| Total Revenue | \$74,432.11 |

| | |
|-----------------------------|---------------------------|
| <u>Net Operating</u> | <u>\$66,289.66</u> |
|-----------------------------|---------------------------|

Note: difference between 2002 and 2003 fees - \$12,405.35