

14664

Attachment A

2003-252

**INTERLOCAL POOL OPERATING AGREEMENT  
SI VIEW POOL**

This Interlocal Pool Operating Agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_, 2003 by and between King County, ("County") and the Si View Metropolitan Park District ("District") 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 last year with impacted cities and other jurisdictions in an attempt to divest itself of these in-city facilities.
- 1.2 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.
- 1.3 As a step towards reaching such a solution, the County and the District have reached an agreement to transfer title to the Si View Pool ("Pool") to the District. However, the District wishes to have the County operate the facility in the short term until it can arrange to take on this responsibility itself or find some other operator.
- 1.4 Currently, the Pool is not in operation.
- 1.5 The County has the staff and expertise to operate the facility and, because the Pool provides a benefit to County residents, is willing to do so on the understanding that this agreement is only for the balance of 2003 and that the County makes no commitments with regard to operation of the Pool in 2004 and beyond.

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 as depicted in the attached Operating Schedule (Exhibit A) and shall assess fees based on its current fee ordinance. 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 jointly by the County and the District. 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 District or the County may terminate this Agreement, consistent with Section 5.

3. FUNDING

3.1. In exchange for the County's operation of the Pool, the District agrees to pay or cause to be paid to the County the total sum of \$100,232.20 (the Estimated Payment), payable in four roughly equal Payments made on or before June 2, July 31, September 30, and December 1 during the term of this Agreement as set forth below. These payments are calculated based on the desired operating schedule, maintenance schedule and staffing set forth in Exhibit A.

<u>Payment Date</u>	<u>Payment Amount</u>
June 2	\$25,058.05
July 31	\$25,058.05
September 30	\$25,058.05
December 1	\$25,058.05

3.2. The Estimated Payment has been calculated by the County as set forth in Exhibit B. The Estimated Payment is equal to an estimate of the net operating cost of the Pool under a normal operating schedule from June 2 through December 31, 2003. The net operating cost of the Pool includes all applicable direct costs (including routine maintenance), 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 will refund the difference to the District 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 District 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. The District will have 30 days to respond in writing as to whether it wishes to provide additional funding to avoid the operational changes, wishes to accept the County's proposed operational changes, wishes to propose alternative operational changes and funding or wishes to terminate this Agreement. If the District determines to provide additional funding, 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 District does not respond within 30 days, the County shall proceed to make the operational changes, including closure, as it deems in its sole discretion are required to address the increased costs and/or funding shortfall. The District waives and releases any and all claims against the County with respect to operational changes made consistent with the foregoing procedure. 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 December 31, 2003, unless earlier terminated as provided herein.
- 4.2. If the District has not made any of the required payments within 10 days after their due date, the County shall send by registered mail and telefax a notice of default to the District, and may terminate this Agreement unless full payment is received within five business days after sending the telefax.

- 4.3. The County or the District may terminate this Agreement at any time in case of a *force majeure*.
- 4.4. Other than a refund pursuant to Section 3.3, the District 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 District 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. If the Agreement is terminated before December 31, 2003, except by reason of *force majeure*, the County will cease operation of the pool prior to the next operating payment.
- 4.6. The parties' obligations under Section 5 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. The County will provide this information as well as a daily swimmer count to the District on a quarterly basis. The County will also allow the District to conduct its own pool user surveys in a manner that does not interfere with pool operations.
- 4.8. All signage, documents, and other materials displayed or presented to the public shall indicate that the facilities are owned and operated by the Si View Metropolitan Park District and shall not display either King County's name, logo, or other County identification. The District is solely responsible for the cost of any and all new signage, displays, brochures or other materials that display its logo and/or identifying mark.

## 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, and indemnify the District against, any liability arising from its negligent acts or omissions in operating the Pool, except to the extent such liability is caused by the District'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. NOTICE

6.1. Any notice, writing or payment given under this Agreement, unless provided for otherwise herein, 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,  
Parks Division  
King County Dept. of Natural Resources  
and Parks  
Street Center, 7<sup>th</sup> Floor  
201 S. Jackson,  
Seattle, WA 98104

For the District:

Susan Kelly  
Si View Metropolitan Park District  
P.O. Box 346  
North Bend, WA, 98045

6.3 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, writing, payment, request, report or other communication are thereafter to be addressed.

## 7. ENTIRE AGREEMENT

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

7.2 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, that signed the original Agreement.

7.3 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 This Agreement may be executed in separate counterparts, each of which will be named an original and all of which collectively shall constitute one document

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

KING COUNTY

Si View Metropolitan Park District

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit A**  
2003 Operating Schedule for Si View Pool

*SPRING / FALL SCHEDULE*

- Opening Date – June 2
- Spring – June 2- June 27
- Fall - September 1 - December 31

Hours:

- Monday through Friday 6am – 9pm (with one hour out for maintenance each day)
- Saturday 8:30am-3pm
- Sundays: closed

*SUMMER SCHEDULE:*

- June 28- August 31

Hours:

- Monday through Friday 6am – 9pm
- Saturday 9am – 3pm
- Sundays: closed

**Holiday closures:**

- 4<sup>th</sup> of July – July 4-6
- Labor Day Weekend Aug 30 – September 1
- 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.

**Staffing:**

[This paragraph is a placeholder. Following Council action, but prior to execution of this agreement, information regarding staffing, duties, hours, and qualifications will be inserted].

**Programming:** [This paragraph is a placeholder. Following Council action but prior to execution of this agreement, a programming schedule which includes rate information shall be inserted]

**Maintenance:**

[This paragraph is a placeholder. Following Council action but prior to execution, a maintenance schedule will be inserted]



June - Dec 2003 Estimated Revenue

<b>Rentals</b>	\$	3,660.00
<b>Drop In Sales</b>	\$	21,880.00
<b>Lessons</b>		
Spring Qtr	\$	3,000.00
Summer Qtr	\$	25,000.00
Fall Qtr	\$	18,500.00
<b>Total</b>	\$	<b>72,040.00</b>

**Gross Estimated Payment**      \$      133,475.70  
 Mothball Credit                      \$      33,243.50

**Net Estimated Payment**         \$      100,232.20

June - Dec 2003 Estimated Expenditures

Pool Manager (with benefits)	\$	38,305.75
1/2 Pool Operator (with benefits)	\$	19,398.75
Temporary Staff	\$	53,796.15
Maintenance Labor	\$	500.00
<b>Account Class Total</b>	\$	<b>112,000.65</b>
Temporary Benefits	\$	9,145.35
<b>Account Class Total</b>	\$	<b>9,145.35</b>
OFFICE SUPPLIES	\$	600.00
HOUSEKEEPING SUPPLIES	\$	1,500.00
CHEMICALS	\$	600.00
MISC OPERATING SUPPLIES	\$	500.00
BUILDING MTRLS & SUPPLIES	\$	500.00
OTHR MINOR EQPMT/SM TOOLS	\$	500.00
MISC REPAIR/MAINT SUPPLS	\$	1,200.00
<b>Account Class Total</b>	\$	<b>5,400.00</b>
TELCOM SERV-ONGOING CHRG	\$	1,257.21
TELCOM SERV-ONE TIME CHRG	\$	-
PRIVATE AUTO MILEAGE	\$	205.35
FUEL	\$	4,585.78
WATER	\$	5,464.51
ELECTRICITY	\$	10,232.84
WASTE DISPOSAL	\$	-
REPAIR/MAINT-OTHER	\$	3,300.00
PERMITS CERTIF & OTHER	\$	1,014.50
<b>Account Class Total</b>	\$	<b>26,060.19</b>
MISC MACHINERY & EQUIP	\$	2,500.00
<b>Account Class Total</b>	\$	<b>2,500.00</b>
Overhead @ 32.5%	\$	155,106.19
	\$	50,409.51
<b>Total Operating Costs</b>	\$	<b>205,515.70</b>