AGENDA
REGULAR MEETING DES MOINES CITY COUNCIL
October 30, 2003 - 6:00 p.m.

**** = It is the intent of the Mayor and City Council to address these items of business, beginning with Comments From the Public, starting at approximately 7:30 p.m.***

CALL TO ORDER - Mayor Steenrod   7 present

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE   King County

*COMMENTS FROM THE PUBLIC: At this time you are invited to comment on items that you wish to bring to Council's attention. Please sign in prior to the meeting and limit your comments to three minutes or less.

- Rob Back campaign
- Debbie Workman - quasi-judicial
- Denny Burnham - police
- Wayne Bader - campaign
- Brenda Siegrist - police

18.56 Type IV quasijudicial

David Litowitz
Scott McFarlane initiative
Alex White - permitting

*BOARD & COMMITTEE REPORTS

*PRESIDING OFFICER'S REPORT

*ADMINISTRATION REPORTS

*CONSENT CALENDAR

1. Motion is to approve the surplusing of a 1995 Ford Explorer, VIN No. 1FMDU34XOSVA27866 from the Police Department and authorize disposing of by auction, sale or transfer to other department or agencies.

*CONTINUED PUBLIC HEARING

SEPA Appeal & Unclassified Use Permit Zenith Viewpointe

SUMMARY: Council received testimony regarding the SEPA Appeal, Development Exception, and Unclassified Use Permit for Zenith Viewpointe at the public hearing conducted October 9, 2003. Council will use this and other information entered into the record to direct administration to prepare findings of fact and draft resolutions supporting Council action on the SEPA appeal and the Development Exception and Unclassified Use Permit applications.

OLD BUSINESS

1. Preliminary 2004 Budget
   SUMMARY: Council will review the proposed budgets for the Legislative, Executive, Finance, Legal Services, Court, and Community Development departments. In addition, staff will provide an overview of the 2004 budgets for the Debt Service, Computer Equipment Operations & Capital Funds, Self-Insurance, Unemployment, Revenue Stabilization, and Facility Repair & Replacement Funds.

2. Traffic Unit Revenue
   SUMMARY: Staff will present a report concerning traffic unit revenue.

3. Towing Services
   SUMMARY: Staff will inform Council of the results of the Request for Proposals for towing/impound services.

NEW BUSINESS

1. Preliminary 2004 Budget
   SUMMARY: Council will review the proposed budgets for the Park & Recreation, Police, Public Works, Marina, and Surface Water Management departments.

2. Mount Rainier Pool Proposed Interlocal Agreement
   SUMMARY: The purpose of this report is to present draft agreements for City Council discussion and direction regarding the Mount Rainier Pool.

NEXT MEETING DATE – Study Session, November 6, 2003

ADJOURNMENT

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES October 9, 2003

The regular meeting of the Des Moines City Council was called to order at 7:40 p.m. by Mayor Steenrod in the City Council Chambers, 21630 11th Avenue South, Suite B.

PLEDGE OF ALLEGIANCE to the Flag was led by Councilmember White.

ROLL CALL - Present: Mayor Maggie Steenrod, Mayor Pro Tem Richard Benjamin, Councilmembers Bob Sheckler, Dan Sherman, Scott Thomasson and Susan White. Absent: Councilmember Gary Petersen. Also present were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, City Attorney Linda Marousek, Domestic Violence Court Advocate Kristen Gabel, Harbormaster Joe Dusenbury, Public Works Director Tim Heydon, Community Development Director Judith Kilgore, Park and Recreation Director Patrice Thorell, Development Services Manager Robert Ruth, and Deputy City Clerk Angela Chaufty.

> **MOTION** was made by Mayor Pro Tem Benjamin, seconded by Councilmember Thomasson, and passed unanimously to excuse Councilmember Petersen from attendance.

COMMENTS FROM THE PUBLIC

Bob Pond, 23116 30th Avenue South

Mr. Pond informed Council that semi-trucks have been parking on 30th Avenue South. He asked that a sign prohibiting their parking be placed at the north end of the street. Mr. Pond noted that the Midway Furniture sign was in need of repair. He asked for an early morning police sweep to remove individuals who were sleeping behind the store. Mr. Pond told Council that motorized scooters were accidents waiting to happen as they were often operated at night without any lights. He believed that that the people of Kings Arm Motel should be held responsible for their actions. Mr. Pond said that he would like to see a record of the number of police calls related to the motel.

Nadine Hansen, 22033 10th Avenue South

Ms. Hansen requested a reconsideration of the City's lease with Cingular. She asked Council to conduct environmental impact and health studies. Ms. Hansen noted that a school, a park, and houses were located in the vicinity of the approved cell tower site.

Marc Gottshall, 22003 10th Avenue South

Mr. Gottshall asked Council to reconsider the lease option with Cingular. He distributed correspondence regarding biological studies of microwave radiation at low intensities. Mr. Gottshall said that, even if only ten of the studies were correct while the rest were in error, a serious issue was still to be considered. He informed Council that several of the appellants were out of town and unable to appear before Council.

Karen Bortner, 22021 10th Avenue South

Ms. Bortner informed Council that she had purchased her home in May 2003. If she had known about the pending cell tower, she would not have bought the house. She informed Council that her 13-year-old daughter had been diagnosed and treated for leukemia eight years ago. While her daughter was doing well now, she still had an increased risk of heart disease and suffered from a calcium deficiency. Ms. Bortner reported that studies have indicated a connection between cell towers and heart problems, calcium concerns, short-term memory loss, and sleeplessness. She asked Council to find a better location for the cell tower.

Denny Burnham, 26826 15th Avenue South

Mr. Burnham asked to defer his comments.

John Burdine, 1413 South 237th Court

Mr. Burdine requested that Council reconsider the cell tower issue due to the unintended consequences associated with the towers. He asked Council to find a location for the tower that was not so close to children and sports fields.

Joe Hendricson, 22017 10th Avenue South

Mr. Hendricson asked Council to reconsider the Cingular lease. He questioned why the City was interested in having a lease for a cell tower as there appeared to be several associated health concerns. He likened it to hormone replacement for women. Mr. Hendricson reported that he had heard that the City had initiated the request for the cell tower. He believed that the long-term effects of cell towers could not be determined without long-term studies. He questioned why the City should be subjected to the possibility of health risks or the worry associated with their unknown health risks.

Catherine Carbone Rogers, 22516 10th Avenue South

Ms. Carbone Rogers urged Council to reconsider the Cingular lease. She voiced concern about the effects of microwave radiation potentially caused by cell towers. The microwave radiation effects were yet unknown as the technology was too new. Ms. Carbone Rogers said that it was a proven fact that children's brains and bodies were more vulnerable to health effects. If the City must have a cell tower, she asked that it be located at a site that would not expose children to the risks. In response to Councilmember Sherman's questioning, Ms. Carbone Rogers informed Council that she had received several questions of concern from Des Moines Elementary School parents although no parents had indicated that they would remove their children from school should the tower be constructed.

Mayor Pro Tem Benjamin said that parents had questioned him concerning the status of the cell tower.

Alex White, 22030 7th Avenue South

Mr. White distributed an article listing Des Moines as one of Washington's fastest shrinking cities. He asked Council to encourage business through the City's permitting process, identification of associated costs, and clarification of procedures and regulations. Mr. White said that business owners should receive consistent treatment and not be subjected to political decisions.

Brenda Siegrist, 20731 7th Place South

Ms. Siegrist thanked the Public Works Department for their fair treatment and thorough efforts concerning the removal of illegally placed political signs. She said that, three weeks ago, her political signs began to disappear within a few hours of placement. She read RCW 29.85.275 regarding the unauthorized removal or defacement of signs. Ms. Siegrist said that she had filed a police report regarding her missing signs and she planned to proceed with prosecution.

Denny Burnham, 26826 15th Avenue South

Mr. Burnham informed Council that was working with Ms. Siegrist to place political signs. He said that he was confident Councilmember Thomasson was not responsible for the removal of the signs but that over-zealous people were removing them. Mr. Burnham asked the incumbents to tell their supporters to stop removing the challengers' signs. Mr. Burnham questioned why, during a Public Works' sweep of the City, political signs had been removed from his and Mr. Bogovich's yards.

BOARD AND COMMITTEE REPORTS

Political Sign Removal

Councilmember Sheckler noted that the issue of the illegal removal of political signs came up every campaign season. If anyone was doing such a thing, he should stop.

Port of Seattle Meeting

Councilmember Sheckler reported that he had attended a meeting with the Port of Seattle. The purpose of the meeting was to discuss subjects of concern to the airport's surrounding cities and the Highline School District, excluding the Third Runway issue. Councilmember Sheckler identified the following concerns of Des Moines:

- To discontinue referring to the buyout area on South 216th Street as a burrow pit. The Port has agreed to identify the area as the buyout area.
- To maintain and enhance the Des Moines Marina area as an attraction.
- To provide economic vitality and avoid any drop in property values.

Councilmember Sheckler said that he was encouraged by the good dialog at the meeting. He reported that the City would provide the Port of Seattle with its vision and the specific details pertaining to the achievement of that vision.

Economic Development

Councilmember White announced that she would miss the remaining October 2003 meetings due to her daughter's surgery in California. She emphasized her interest in economic development and said that she would e-mail correspondence to the Council regarding that subject.

ADMINISTRATION REPORTS

Comments from the Public – Bob Pond

City Manager Piasecki said that he would follow-up on Mr. Pond's comments immediately.

Comments from the Public – Alex White

City Manager Piasecki noted that the figures used in the study identifying Des Moines as one of the state's fastest shrinking cities was based on Office of Financial Management (OFM) information. The OFM calculates population projections based upon a number of factors including a snap-shot of the number of apartment vacancies at any certain time. He noted that each time a physical census has been performed, Des Moines' population has increased.

Comments from the Public – Hendricsen

City Manager Piasecki announced that Cingular had approached the City about the cell tower. Per the terms of the agreement, Cingular would pay $1,200 per month to the City. The agreement also contained an annual escalator clause based on inflation. After five years, the lease amount would be reevaluated against the current market.

Comments from the Public – Denny Burnham

City Manager Piasecki asked Mr. Burnham and Mr. Bogovich to provide their addresses to him so that he could research the reason for the removal of political signs from their yards.

Status of Chief of Police Position

City Manager Piasecki informed Council that an initial offer had been proposed to one of the two finalists for the Chief of Police position. He hoped to soon announce the name of the new Chief of Police.

Air Monitoring System Grant

City Manager Piasecki noted that he had distributed a draft letter addressed to Mary Berg, Program Manager of the Air Program for the Department of Ecology to Council. The purpose of the letter was to encourage the Department of Ecology to submit a grant application to the U.S. EPA for a $200,000 grant to place an air toxics monitoring station near SeaTac Airport. If Council concurred, he recommended that the Mayor sign the letter.

Council agreed that the Mayor should sign the letter.

CONSENT CALENDAR was read by Deputy City Clerk Chaufty.

1. Motion is to approve the minutes of September 25, 2003.

2. Findings: Vouchers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing which has been made available to the City Council.

Motion: As of this date the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers included in the above list and further described as follows:

Claim checks #91219 through #91368 & electronic fund transfers in the total amount of $510,396.88

Payroll fund transfers in the total amount of $351,958.45

3. Draft Resolution No. 03-001 ***[Assigned Res. No. 963]*** - Title: A Resolution of the City Council of the City of Des Moines, Washington, fixing a time for a public hearing to consider vacation of a portion of public right-of-way in the City of Des Moines.

Motion is to approve Draft Resolution No. 03-001 setting a public hearing for November 13, 2003, to consider vacation of the southern half of public right-of-way known as 19th Avenue South (previously identified as 20th Street), between South 222nd Street and South 223rd Street, in the City of Des Moines.

~~4. Draft Resolution No. 03-270 - Title: A Resolution of the City Council of the City of Des Moines, Washington, regarding the Steven J. Underwood Memorial Park Field Lighting Project, and authorizing application for funding assistance for a Youth Athletic Facilities Program project to the Interagency Committee for Outdoor Recreation, as provided in chapter 79A.25 RCW.~~

~~Motion is to approve Draft Resolution No. 03-270 authorizing application to the Interagency Committee for Outdoor Recreation.~~

5. Motion is to increase the City Manager's authority to approve change orders for the floating breakwater anchoring system from 10 to 21%, and that additional Marina Depreciation and Improvement funds in the amount of $17,800 be allocated to the Redondo Improvement Project.

In regard to Item No. 5, Harbormaster Dusenbury informed Council that actual water depths were significantly greater than indicated on the project's plans. As the bid price had been based upon the incorrect depth calculations, additional money was needed to purchase the correct Seaflex anchor lines. Staff would address the impact of the miscalculation with the project consultant.

Mayor Pro Tem Benjamin removed Item No. 4.

In regard to Item No. 2, Councilmember Thomasson questioned whether the street should be identified as 19th Place South.

Public Works Director Heydon explained that he had researched the original plat and found that the street was an unopened right-of-way with multiple names. A more detailed map of the area would be presented to Council at the hearing.

MOTION was made by Councilmember Sheckler, seconded by Councilmember Thomasson, and passed unanimously to approve the consent calendar as amended.

REMOVED CONSENT CALENDER ITEM

Draft Resolution No. 03-270 ***[Assigned Res. No. 964]*** – Authorizing Application to Interagency Committee for Outdoor Recreation

In response to Mayor Pro Tem Benjamin's questioning, Park and Recreation Director Thorell verified that the youth football players in Des Moines would have a place to play football.

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sherman and passed unanimously approve Draft Resolution No. 03-270 authorizing application to the Interagency Committee for Outdoor Recreation.

AGENDA REVISION

Mayor Steenrod announced that the public hearing for the Department of Justice Grant Funds for the City's Domestic Violence Program would be conducted as the first order of business.

PUBLIC HEARING

Department of Justice Grant Funds for Domestic Violence Program

Mayor Steenrod read the rules for conducting a public hearing. She opened the public hearing.

City Attorney Marousek informed Council that the City was eligible to receive funds from the Local Law Enforcement Block Grant. The funding was needed to continue the City's Domestic Violence Court Advocate position through December 2004.

As the majority of victims do not want to participate in the prosecution of their cases, Domestic Violence Court Advocate Gabel said that she often tries to resolve the issues before going to trial.

Mayor Steenrod called for proponents. She placed the speaker under oath.

PROPONENT

Denny Burnham, 26826 15th Avenue South
Mr. Burnham voiced support for the continued funding of the Domestic Violence Court Advocate position. He said that it was an opportunity for the city to spend money on a program that helped people.

OPPONENTS – None.

Mayor Steenrod closed the public hearing.

MOTION was made by Councilmember Sherman, seconded by Councilmember Thomasson, and passed unanimously to accept the Local Law Enforcement Block Grant in the amount of $19,183, funding the City's Domestic Violence Advocate Program, and to authorize the City Manager to execute the necessary papers to implement such program.

At 8:38 p.m., Mayor Steenrod declared a ten-minute break.

CONTINUED PUBLIC HEARING

SEPA Appeal & Unclassified Use Permit Zenith Viewpointe
Mayor Steenrod reopened the SEPA Appeal and Unclassified Use Permit hearing for Zenith Viewpointe.

Councilmember White recused herself from participation.

Mayor Steenrod announced that the purpose of the item was to provide additional information requested by Council at the September 11, 2003 City Council meeting. The Council would use this and other information entered into the record to direct administration to prepare findings of fact and a draft resolution supporting Council action on the SEPA appeal and review of the underlying applications at a later date.

In response to Councilmember Sheckler's question, Community Development Director Kilgore informed Council that SEPA rules allowed for a "phase review" of the project.

MOTION was made by Councilmember Thomasson and seconded by Mayor Pro Tem Benjamin to accept testimony regarding the Unclassified Use Permit (UUP) and the development exception while reserving the right to ask additional questions regarding SEPA issues.

Councilmember Thomasson noted that Council could not take action on the UUP and development exception until SEPA direction had been provided.

Councilmember Sheckler voiced support for the motion. He mentioned that Councilmember Petersen wanted to be present when SEPA action was taken.

VOTE ON MOTION: Motion passed unanimously.

City Attorney Marousek distributed a handout clarifying the SEPA appeal standard of review. Per case law, the SEPA decision standard of review was adequate if it contained a reasonably thorough discussion and mitigation of probable significant adverse environmental impacts of the proposed actions.

At 9:08 p.m., Mayor Pro Tem Benjamin left the Council Chambers.

Development Services Manager Ruth informed Council that DMMC 18.32.010 defined an unclassified use as a use that possessed characteristics of such unique and special form as to make impractical their being included automatically in any classes of use as set forth in the various zones. The purpose of an unclassified use review was to determine that the characteristics of any such use was not unreasonably incompatible with the type of uses permitted in surrounding areas. According to DMMC 18.86.092(b), the applicant must demonstrate that

a) The environmentally sensitive area was lawfully altered at the time the alteration occurred;
b) The alteration had significantly disrupted the natural functions of the environmentally sensitive area;
c) The proposal utilized to the maximum extent possible the best available construction, design, and development techniques which would result in the least adverse impact on the environmentally sensitive area;
d) The proposal incorporated the development standards of DMMC 18.86.070 through 18.86.087 and the surface water design manual to the maximum extent possible; and
e) The proposal was consistent with the purpose and intent of DMMC 18.

In response to Councilmember Sherman's questioning regarding "natural functions", Development Services Manager said that the criteria was subject to interpretation.

At 9:15 p.m., Mayor Pro Tem Benjamin returned to the Council Chambers.

<u>Proponents</u>

<u>Howard Jensen</u>, Seattle, WA

As attorney for the applicant, Mr. Jensen offered the following information to Council:

<u>Development Exception</u>
Had the area been altered before?

- The area had been fully developed and the vegetation had regrown.
- Testimony stating that the hillside was presently not adequately controlling surface water runoff had been received.
- The proposal would improve the existing surface water management situation as the project was required to comply with surface water management regulations.

Would the best available construction, design, and development techniques be utilized?

- The project had been designed to follow the contour of the land with minimal excavation. Rockeries and retaining walls would allow the project to conform to the natural slope as much as possible.
- Council could dictate specific conditions to ensure this requirement was met.
- The intent of the applicant was to provide the best possible project.

Mr. Jensen reviewed the permitted uses for the property. He encouraged Council to evaluate the proposal against the identified permitted uses as they established the standard for review. He believed that the proposed project would create less impact to the neighborhood than the property's permitted uses. Mr. Jensen stated that the use of the surrounding properties, single-family residential housing and the Masonic Temple, must also be considered. He said that staff had done a good job evaluating the unclassified use permit, SEPA issue, and development exception. He informed Council that staff had placed additional conditions on the project to mitigate impacts of incompatibility with the surrounding properties. With one exception, Mr. Jensen said that the applicant agreed with the conditions imposed by staff. The exception dealt with staff's proposed condition requiring the setback to be modulated with the height of the building. This would result in a thirteen-foot setback for the top level of the development. Mr. Jensen recommended that Council approve a ten-foot setback for the building's vertical span. He informed Council that the Planning Agency had concurred with staff's conditions plus added an addition provision which would reduce the development from three buildings to two. Mr. Jensen told Council that staff was not in agreement with this additional condition. He distributed a diagram comparing a two building design to a three building design (Exhibit 11). Mr. Jensen said that the two building layout resulted in a bulkier design, while the three building arrangement provided a view corridor and was more aesthetically pleasing. Mr. Jensen recommended that Council adopt staff's conditions with the exception of the additional setback requirement. In closing, he encouraged Council to keep in mind the types of uses that were permissible on the property without their approval. He distributed a legal brief summarizing his position concerning the SEPA Appeal (Exhibit 12).

<u>Alex White</u>, Applicant
Regarding the Planning Agency's proposed condition to limit the development to two buildings, Mr. White stated that staff's objective was to separate the commercial building from the residential area. He felt that the three building layout would be more compatible with the surrounding single-family homes.

Upon questioning from Mayor Steenrod, Development Services Manager Ruth explained that the Planning Agency believed that the additional ten feet gained by combining two of the buildings would add value to the project's open space. Staff, however, felt that the additional open space was not significant, would create a building with more mass and would reduce the amount of light and airspace between the two buildings. Development Services Manager Ruth stated staff's recommendation to allow up to six dwelling units and to increase the setback of the upper level to thirteen feet. He informed Council that the criteria for approval had been satisfied.

Councilmember Sheckler asked for clarification on the proposed distance between the buildings for the two building layout versus the three building layout.

OPPONENTS

Nancy Rogers, 524 2nd Avenue, Suite 520, Seattle
Attorney Nancy Rogers entered "Zenith Community – Response to Misstatements of Law Regarding SEPA Standards" (Exhibit 13) into the record. She then distributed and reviewed the "Zenith Community – Summary of Primary Concerns" (Exhibit 14). She identified the community's primary concerns as:

- The standard by which a UUP decision was made should be whether the proposal was reasonably compatible with the types of uses permitted in surrounding areas rather than to what intensity the use should be allowed.
- The staff report incorrectly assumes that, as mitigated, the project would not be unreasonably incompatible with types of uses permitted in surrounding areas.
- No evidence that the office and condo development would serve the everyday needs of the neighborhood had been presented.
- The scale of the project and gross over-counting of lot area to obtain a higher floor area does not ensure a limited intensity land use in keeping with the intended purpose of the N-C zone.
- The N-C zoning appeared to be the result of an error made in 1985 when the City Attorney sent a memorandum to the City Clerk calling for an administrative correction to the City's zoning map, changing the Zenith Store property from RS-15,000 to B-N.
- In violation of DMMC 18.20.040, the applicant was incorrectly allowed to include all of the public street right-of-way in his lot dimensions.

Ms. Rogers stated that the inclusion of the street right-of-way in Mr. White's calculation was prima facie evidence of the unreasonable incompatibility of the project. The calculation created a substantially larger project for the property than the maximum project size anticipated under N-C zoning. Ms. Rogers said that the development exception should not be approved as the past site alterations had not significantly disrupted the natural functions of the slope. In addition, the amount of excavation required by the proposed project would greatly exceed the best available construction, design, and development techniques that would result in the least adverse impact to the sensitive area. Ms. Rogers urged Council to deny approval of the project. In response to Mr. Jensen's comments regarding surface water runoff, Ms. Rogers stated that the runoff was caused by the roadway rather than from the property.

AGENDA REVISION

Mayor Steenrod announced that Draft Resolution No. 03-275, Final Acceptance of Highline Water District 2002 Comprehensive Water System Plan, and the Cingular Lease would not be discussed at this meeting. The subjects would be placed on the October 23, 2003 agenda.

City Manager Piasecki announced that Highline Water District had submitted their Comprehensive Water System Plan to the City on September 30, 2003. Council had ninety days from that date to take action on the Plan.

PUBLIC HEARING, CONTINUED

SEPA Appeal & Unclassified Use Permit Zenith Viewpointe, Continued

Mayor Steenrod placed all speakers under oath to testify to the truth to the best of their knowledge.

Mel Bogovich, 23635 Marine View Drive

Mr. Bogovich stated that the Des Moines Comprehensive Plan required the preservation and integrity of existing single-family neighborhoods. He said that the Zenith neighborhood was the least dense area in Des Moines. The proposed development would insert an incompatible high density land use into a unique area that was entitled to protection. Mr. Bogovich felt the proposed development was not consistent with prior land use decisions for the neighborhood. He informed Council that he had tried to develop three additional family housing units on his property and had been denied. He said that he had a letter from Mr. Ruth defining congestion and density. Mr. Bogovich questioned how moving one lot to the south would solve the congestion and density problem. In closing, Mr. Bogovich said that zoning would not solve density and congestion in a neighborhood.

Robert Benson, 23905 Marine View Drive

Mr. Benson informed Council that his home had been constructed in 1938 as a store, was transformed into a post office, and then remodeled into a five-unit apartment complex. Mr. Benson purchased the property in 1974 and voluntarily reduced the complex to three units. He said that the proposed development would cause increased parking on Marine View Drive and interfere with his tenants' parking. Mr. Benson reported that he had been told by the City planners that there would be no change in the grade of South 239th Street but he had seen evidence that there might be as the driveway would be too steep. The grading of the street would cause him and his neighbor to no longer have access to their yards from South 239th Street. He said that the project was unacceptable and incompatible with the surrounding neighborhood.

Lloyd Lytle, 23911 Marine View Drive

Mr. Lytle displayed a picture of cars parked on Marine View Drive (Exhibit 16). He said that he opposed the proposed project on the grounds that the large multi-family buildings would be incompatible with the character of the surrounding residential neighborhood. Traffic density, parking needs, and noise would be increased. Mr. Lytle informed Council that the proposed site was only fifty feet wide. He noted that normal single-family homes in the area required 15,000 feet while the proposed project called for six to eight living units plus two office units being located on 9,600 square feet. Mr. Lytle said that recent King County records showed the property as RS-15,000. He believed the property had been incorrectly zoned N-C. Mr. Lytle said that the city was apparently going to give the developer the adjacent portion of South 239th for his driveway and parking requirements. If the City wanted to give property away, Mr. Lytle stated that it should be for the benefit of the community and not for the enrichment of a particular investor. He said that, in the past, others such as Mr. Bogovich had not been allowed to build single-family homes on a larger piece of property due to density issues. Mr. Lytle stated that the proposed development would degrade surrounding property values. The view of the proposed development would be facing south rather than west. Mr. Lytle said that the Planning Department and developer had compared the proposed development to the Masonic Home. He told Council that the Masonic Home was situated on 30 acres and did not abut any property lines. Mr. Lytle stated that parking for the project would migrate on to Marine View Drive creating a dangerous traffic situation.

Alice McCabe, 23902 7th Avenue South
Ms. McCabe said that the proposed project would bring many risks and additional traffic to the neighborhood. She believed that South 239th Street had been deemed too steep for vehicle traffic previously and yet was now okay for office parking and eight living units. Ms. McCabe said that the project was incompatible with the present neighborhood. According to her measurements, the distance between the utility boxes on the north and south side of South 239th Street was 21 feet rather than 31.5 feet, as measured by the developer. Ms. McCabe questioned how a road, sidewalk, and setbacks could share 21 feet. She said that she and Mr. Benson accessed their property from South 239th Street. Ms. McCabe demanded that the project be denied as the traffic, the size of the buildings, the density of the project, the grading of the road, and the shared use of South 239th Street did not make sense for the neighborhood.

Bob Pond, 23116 30th Avenue South
Mr. Pond said that the City should not sell out single-family homes because they are so desperate for tax revenue. He stated that the single-family home was the basis for the American system. Mr. Pond suggested that the developer move his project to the Pacific Ridge area as much land was available for improvement. He questioned why a residential area that did not want this type of development should be attacked. If the project was approved, Mr. Pond said that Des Moines would become a multi-family, high density, commercial land that would take all-comers because it was desperate.

At 10:25 p.m., **MOTION** was made by Councilmember Thomasson, seconded by Councilmember Sherman, and passed unanimously to extend the meeting to 11:00 p.m.

Ed Pina, 24215 7th Avenue South
When the Zenith area was in the process of being annexed to Des Moines, Mr. Pina said that he had expressed his concern that the City would allow the development of condominiums in the area to the Zenith Land Use Council. The City Attorney had told him that condominium development in the area would not be possible as the community corporation would control it. Mr. Pina informed Council that he had served two terms on the Planning Agency when the Comprehensive Plan was being developed. Again, he was advised that the area's zoning would not allow condominium development. Mr. Pina asked Council to not let a small tax increase affect a neighborhood that has existed for a long time.

Peter Skelly, 23622 7th Avenue South
Mr. Skelly objected to staff's allowance of the over-counting of property area to the benefit of the developer so that the number of units and floor area of the project's buildings could be significantly increased. Mr. Skelly stated that the Municipal Code clearly defined building site and lot size and staff's October 2002 code interpretation was bogus. He referred Council to DMMC 12.04 for a clear separation between private development sites and public rights-of-way. Mr. Skelly said that the Des Moines Comprehensive Plan indicated that there should be no more than eighteen dwellings per acre. This would allow for four units on the site rather than the six units recommended by staff. Mr. Skelly said that the project was incompatible with the existing single family neighborhood. He believed that the Comprehensive Plan established the protection of single-family neighborhoods as a high priority for the City. Mr. Skelly said that residents were concerned that City staff was neither protecting them nor following the policies set forth by

the Comprehensive Plan and zoning code. If approved, Mr. Skelly said that Council would not be serving the residents but special interests. He urged Council to reject the requested UUP.

Jerry Bergman, 620 South 239th

Mr. Bergman said that the zoning history of the property was cloudy. He stated that the purpose of N-C zoning was to provide a service that served the everyday needs of the surrounding residents. If N-C zoning was not in affect nor guaranteed then the N-C zoning should be removed. Mr. Bergman said that he had provided information regarding a hearing examiner's decision concerning a similar issue in Medina in a letter to Council dated August 9, 2003. Mr. Bergman noted that the density and intensity of Judson Park and Masonic Retirement Centers were different than the property situated on the west side of the road. He said that the Zenith neighborhood had a legally binding agreement with the City as a result of the beach access lawsuit in the 1980's. At that time, the neighborhood was designated "parking restricted to residents only". The boundaries were established by an L.I.D. created by Ordinance No. 895 and confirmed by Ordinance No. 984. A variance request (File No. HV94-010) to reduce front and back setbacks on a property south of the Zenith store site had been denied on May 16, 1984. The Bogovichs' request to subdivide a single-family residential lot had been denied due to congestion and density concerns. Mr. Bergman said that none of these proposed actions compared to the Zenith Viewpointe development. He said that the development would significantly alter the existing density and intensity and it would destroy the unique character and aesthetics of the neighborhood. Mr. Bergman noted that the Zenith Viewpointe development could be 35 feet high while the setback requirements were reduced. He stated said that past Councils had recognized the unique character of the Zenith neighborhood and had helped the residents improve it. Mr. Bergman questioned whether Council wanted to be responsible for allowing a multi-family development and for ruining the neighborhood.

Jan Bergman, 620 South 239th

Ms. Bergman said that she would like to donate her three-minutes to George Pettibone.

Debbie Workman

Ms. Workman reviewed the purpose of N-C zoning as described in DMMC 18.20. She said that it did not appear that the proposed development would provide services to the residents. Ms. Workman informed Council that the store was originally a single-family home. Since it was no longer a store, she believed that the property should revert back to RS-15,000. Ms. Workman presented an unofficial record from Transnation Title Insurance Company dated March 2002 which identified the property as RS-15,000 (Exhibit 15). She said that residents were very concerned with the office space/condominium development as they were promised, in 1982, that condos would not be constructed on Marine View Drive in the Zenith area. She believed approval of the proposed development would set a precedent.

Howard Jensen

As attorney for the applicant, Mr. Jensen said that Exhibit 15 could be entered into the record but the value of the document should be considered.

Alex White, 22030 7th Avenue South, #204

Mr. White said that he would like to provide the City Attorney with a copy of the lot's official property profile which indicated that the property was zoned N-C.

Keith Workman, 23903 7th Avenue South

Mr. Workman said that he would like to donate his three-minutes to George Pettibone.

Roger Gallington, 23913 6th Avenue South
Mr. Gallington said that other speakers had adequately covered most of his concerns. As business customers were restricted from the commercial venture on the property, he questioned how Council would enforce this restriction.

Scott Wayne, Des Moines
Mr. Wayne voiced agreement with Mr. White's comments calling for support of business in the Des Moines' community and asking for a fair and objective ruling, not one based upon political reasons. Mr. Wayne reviewed the purpose of the N-C zone as listed in DMMC 18.20.010. He said that the code identified an objective of the zone as to maintain a limited intensity of land use compatible with serving the neighborhood residential area, rather than the community. Mr. Wayne said his concerns regarding the square footage of the lot had been covered by two other speakers. He reported that the September 11, 2003 City Council meeting minutes indicated that Councilmember Thomasson had questioned the square footage issue while Mayor Pro Tem Benjamin had said that the project looked good on paper but did not fit aesethically. Mr. Wayne said that the action of questioning the approval of the UUP against the established land use codes was in direct support of Mr. White's request for an objective and reasonable rulings. Mr. Wayne stated that Mr. White's proposed project was unreasonably incompatible with the neighborhood and did not comply with the City's code.

Shirley Robertson, 23660 7th Avenue South
Ms. Robertson said that if Council looked at the property in question and studied the proposed project, they would determine that the plan was not compatible with the existing Zenith neighborhood. She felt that the project would not in any way preserve the integrity or character of the area. Ms. Robertson said that the residents would like to have their neighborhood maintained as a single-family neighborhood.

Linda Darimont, 23910 6th Avenue South
Ms. Darimont expressed her concern about the safety of the neighborhood children as they walked to and from their assigned school bus stops. She noted that elementary aged children currently used the undeveloped South 239th Street to access the bus stop in front of the old Zenith Store from 7th Avenue South. Their only other option was to walk to South 236th Street or South 240th Street and then to Marine View Drive. They would then need to walk on Marine View Drive to the bus stop. As there are no sidewalks on the west side of Marine View Drive, Ms. Darimont felt it was dangerous to expect young children to walk that route. If the Zenith Viewpointe project was approved, Ms. Darimont felt it would be difficult for the children to safely get through South 239th Street during construction. She noted that the proposed plans showed a narrow public walk. She questioned whether the hill would be negotiable due to its steepness and its slickness during winter rains. Ms. Darimont also questioned who would be responsible for maintaining the walkway. She said that middle and high school students would also be put at risk while walking to their bus stop. Ms. Darimont told Council that the Zenith Viewpointe project was out of place in the neighborhood and the extra traffic and residents would compromise the safety of the families currently residing in the neighborhood.

At 10:55 p.m., **motion** was made by Councilmember Sheckler, seconded by Mayor Pro Tem Benjamin and passed unanimously to extend the meeting by fifteen minutes.

George Pettibone, 23653 Marine View Drive
Mr. Pettibone presented Council with the history of the subject property. He said that the grocery store had been built twenty to thirty years prior to 1944. The original store was attached to a house which was constructed in 1908. Mr. Pettibone maintained that the single-family property had been non-conforming for approximately one century. He said that, in 1958, King County Ordinance No. 18801 adopted a new zoning map (Exhibit 17), zoning codebook, and Comprehensive Plan book. According to 1958 through 2002 King County records, the property was zoned RS-15,000. In 1982, the property was annexed to Des Moines through the adoption of Ordinance No. 550. Ordinance No. 550 clarified that Des Moines would maintain King County zoning in the annexed area. Mr. Pettibone informed Council that, in 1985, the City Attorney directed the City Clerk to amend the zoning map, changing the RS-15,000 zoning to B-N. This action was unlawful as it had no public notice, no Zenith Land Use Council review, and no Council action. Mr. Pettibone contested that the property owned by Bob Benson, rather than the Zenith Store property, should have been zoned B-N. Mr. Pettibone said that he had filed ten public record requests and staff had stalled the last five requests. He informed Council that he had spoken to the King County's Chief Commercial Property Assessor Bob Rosenburger, former Mayor Richard Kennedy, and former City Attorney Jim Gorham regarding the issue. All of them had confirmed that the Zenith Grocery store site was non-conforming property on a single-family residential lot.

Mayor Steenrod asked that Mr. Pettibone provide the City Manager with copies of his requests for public information.

City Attorney Marousek assured Council that the City had complied in every way with the public disclosure laws and Mr. Pettibone had been afforded every opportunity legally and professionally to review the documents. She could provide records documenting compliance.

Mr. Pettibone said that he had a letter from the City stating that staff had not finished his last five requests. Mr. Pettibone informed Council that he had purchased his house in 1992. When questioning the real estate agent regarding the Zenith Store property, Mr. Pettibone said that he had been told not to worry as two houses could not be built on a single-family lot. He also had his attorney research the property. The attorney reported that the Zenith Store had been grandfathered into the City. When the store closed, the property would be zoned RS-15,000. Mr. Pettibone said that the store might have been illegally subleased for the period of 1997 through 1999. In closing, Mr. Pettibone said that the property had reverted back to RS-15,000. The City owed Mr. White an apology and he should be permitted to only construct a single-family house on the property.

Councilmember Thomasson asked that a copy of the Comprehensive Plan adopted under Planning Director Eric Shields be made available to all parties.

City Attorney Marousek told Council that the testimony regarding zoning could be ruled out-of-order and not relevant to the issues before Council as this was not a zoning hearing but a UUP hearing.

At 11:10 p.m., **motion** was made by Councilmember Thomasson, seconded by Councilmember Sherman and passed unanimously to extend the meeting by five minutes.

Corinna Harn, 23910 6th Aveuue South

Ms. Harn disagreed with the City Attorney's statement as everything Council considered was based up the assumed zoning of the property. She asked Council to reconsider that particular issue. Ms. Harn stated that everything Mr. White and his attorney had presented had been based upon their view of the property's zoning. Ms. Harn informed Council that she had reviewed Mr. Pettibone's documents. She agreed that the zoning was a result of the former City Attorney's mistake which resulted in an erroneous and illegal attempt to rezone the property. Ms. Harn voiced agreement with Mr. White's comments concerning ensuring that the rules are followed. She asked that the City Attorney to review the information presented by Mr. Pettibone to determine whether the property was truly zoned RS-15,000 rather than N-C. Ms. Harn stated her belief that the zoning should be RS-15,000. She said that compliance with rules also referred to compliance with the site size of the property. She stated that the rules indicate that the right-of-way cannot be included in the lot size calculation. She presented a section of the Greater Des Moines Comprehensive Plan map which states that the maximum density of single-family and multi-family areas was indicated by the number of dwellings per residential acre excluding the right-of-way (Exhibit 18). Ms. Harn believed that the property would need to be substantially re-graded in order to achieve appropriate access to the development. She asked Council to review a survey of the property and determine the width of the property and of the right-of-way. Ms. Harn asked Council to follow the rules regarding access to the property. She said that, at this point, the City only had legal access from the north. In closing, Ms. Harn said that, if the property was grandfathered in as a business, it should now revert back to RS-15,000.

MOTION was made by Councilmember Thomasson, seconded by Mayor Steenrod, and passed unanimously to continue the hearing to October 30, 2003.

Ms. Rogers said that Mr. Pettibone had additional exhibits regarding excavation. She asked that he be allowed to present that information to Council as his time had been interrupted.

City Attorney Marousek noted that the record for acceptance of evidence had not been closed. Council could ask questions of speakers. If any speakers wish to be available for Council's questions, they should be available at the next meeting.

NEXT MEETING DATE - Regular Meeting October 23, 2003

ADJOURNMENT

The meeting expired at 11:15 p.m.

Respectfully submitted,

Angela M. Chaufty
Deputy City Clerk

ACTION ITEM FROM 10/09/03 MEETING

- Respond to Mr. Pond's issues regarding his neighborhood.
- Research why political signs had been removed from the vicinity of Mr. Burnham and Mr. Bogovich's yards.

AGENDA ITEM

SUBJECT: Surplus Property

ATTACHMENTS:
Memo from Interim Chief of Police Tucker

AGENDA OF: October 30, 2003

DEPT. OF ORIGIN: Police

DATE SUBMITTED: October 24, 2003

CLEARANCES:
[ ] ________________

APPROVED BY CITY MANAGER
FOR SUBMITTAL: ________

Purpose and Recommendation:

The purpose of this is item is to surplus a vehicle from the Police Department.

Suggested Motion:

The following motion will appear on the Consent Calendar:

"Motion is to approve the surplusing of a 1995 Ford Explorer, VIN No. 1FMDU34XOSVA27866 from the Police Department and authorize disposing of by auction, sale or transfer to other department or agencies."

Background:

The attached memo requests the surplusing of a vehicle which was used for undercover drug operations. As the vehicle has become identified, it is no longer safe for the undercover officer and makes covert operations impossible.

Discussion:

None.

Alternatives:

None.

Financial Impact:

None

Recommendation/Conclusion:

Administration recommends Council surplus the vehicle as requested.

Concurrence:

N/A

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MEMORANDUM

Date: October 23, 2003

To: Tony Piasecki
City Manager

From: Kevin Tucker KT
Interim Chief

Subject: Request to Surplus Undercover Vehicle

In October of 2002 the department purchased a vehicle from the state auction for the purpose of undercover drug operations. This vehicle was purchased using Asset Forfeited Funds. The vehicle was used over the last year without becoming identified by the criminal element as a police undercover vehicle. However in the last couple of weeks there have been several large /high profile arrests which have caused the vehicle to become identified by the very same criminal we are trying to arrest. This makes it very unsafe for the undercover officer as well making covert operations impossible.

In order to continue making an impact with our undercover operations we request council approval to surplus this vehicle back at the state auction and funds received from the sale to be replaced in the asset forfeited account.

The vehicle we request to surplus is a 1995 Ford Explorer, Vehicle Identification Number 1FMDU34XOSVA27866.

We will then make other arrangements for undercover vehicles using the Asset Forfeiture Account to fund the need.

approved
AP 10/24/03

Agenda of 10/30/03

Continued Public Hearing

SEPA Appeal & Unclassified Use Permit -
Zenith Viewpointe

There is no new information for this agenda item. Please bring your previous agenda packet to the meeting. If you need a copy of the packet, please contact the City Clerk's office at (206) 870-6580.

OLD BUSINESS
Item #1

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: 2004 Budget – Department Reviews 2004 Budget – Debt Service, Internal Service & Reserve Funds	FOR AGENDA OF: October 30, 2003
	DEPT. OF ORIGIN: Finance
	DATE SUBMITTED: October 17, 2003
ATTACHMENTS: Department Reviews Attachments 1- 42 Debt Service, Internal Service & Reserve Funds Attachments A - M	CLEARANCES: [ ] Finance ________
	APPROVED BY CITY MANAGER FOR SUBMITTAL: ________

Purpose and Recommendation

The purpose of this agenda item is to report to the City Council individual department operating budget information proposed for 2004. Department briefings scheduled include Legislative, Executive, Finance, Legal Services, Municipal Court, and Community Development.

Staff will provide an overview of the 2004 budgets for the Debt Service Funds, Computer Equipment Operations & Capital Funds, Self-Insurance Fund, Unemployment Fund, Revenue Stabilization Fund, and Facility Repair & Replacement Fund.

Background

The 2004 budget process focused on cost containment and staff was directed to maintain discretionary expenditures to 2003 levels. The base budgets provided were developed within these cost constraints. In addition, departments' have submitted their highest unmet budget needs for Council's review. The attachments detail each department's 2004 base budgets by expenditure category in comparison to the 2003 budget and 2003 estimated yearend. Explanations are provided for percentage changes in the 2004 budget from the 2003 budget.

Recommendation

No actions is required. This is intended to communicate the 2004 operating budget information.

City of Des Moines

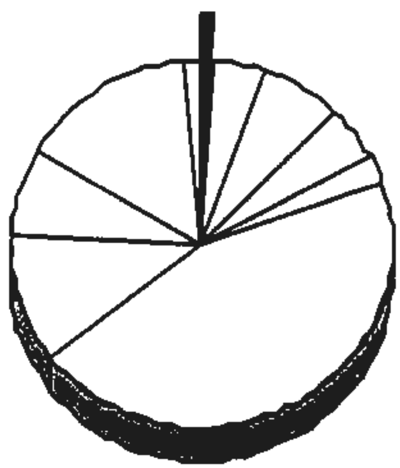
2004 Budget
Department Reviews

Attachment 1

General & Street Funds 2004 Budget
Department: Legislative

PERCENT OF BUDGET

0.8%



2004 Operating Budget

$14.4 Million

Expenditures by Division:

Division	2003	2004	Chg
City Council	$140,907	$119,902	-14.9%

Staffing Levels:

City Council	7.0	7.0	0.0

Attachment 2

General & Street Funds 2004 Budget
Department: Legislative

Description	2003 Bgt	2003 YE	2004 Bgt	%Chg
Salaries & Wages	$66,600	$66,600	$66,600	0.0%
Personnel Benefits	5,300	5,300	5,300	0.0%
Supplies	1,100	1,100	1,100	0.0%
Other Services	20,000	191,905	16,840	-15.8%
Intergov't Services	47,000	47,700	29,000	-38.3%
Interfund Charges	907	907	1,062	17.1%
Total Expenditures	**$140,907**	**$313,512**	**$119,902**	**-14.9%**

Attachment 3

General & Street Funds 2004 Budget
Department: Legislative

Analysis of Budget Changes:

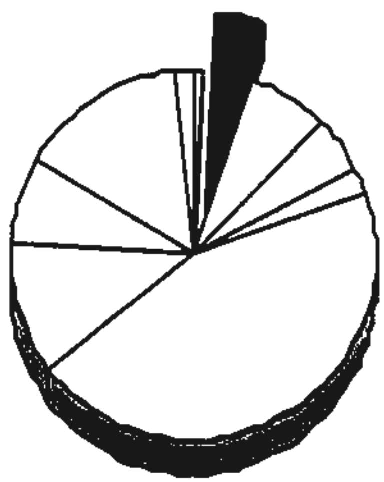
- **Other Services** - 15.8% reduction due to decrease in Travel & Miscellaneous categories

- **Intergov't Services** - 38.3% reduction in King County Election Services due to off-year election cycle

- **Interfund Charges** - 17.1% increase due to change in insurance assessment based on L & I hours

General & Street Funds 2004 Budget
Department: Executive

PERCENT OF BUDGET
4.5%



2004 Operating Budget
$14.4 Million

Expenditures by Division:

Division	2003	2004	Chg
Executive	$263,996	$280,518	6.3%
Record Svcs	83,420	83,102	-0.4%
Personnel	128,683	141,325	9.8%
Central Svcs	88,655	80,970	-8.7%
Comm Info	56,500	59,550	5.4%
Total	$621,254	$645,465	3.9%

Staffing Levels:

Executive	2.5	2.5	0.0
Record Svcs	1.0	1.0	0.0
Personnel	1.5	1.5	0.0

Attachment 5

General & Street Funds 2004 Budget

Dept: Executive Division: Executive

Description	2003 Bgt	2003 YE	2004 Bgt	%Chg
Salaries & Wages	$194,557	$192,200	$204,176	4.9%
Personnel Benefits	47,017	48,700	51,790	10.2%
Supplies	1,600	1,200	1,400	-12.5%
Other Services	8,000	5,070	5,970	-25.4%
Interfund Charges	12,822	12,822	17,182	34.0%
Total Expenditures	**$263,996**	**$259,992**	**$280,518**	**6.3%**

General & Street Funds 2004 Budget

Dept: Executive Division: Executive

Analysis of Budget Changes:

- **Salaries & Wages** - 4.9% increase due to adjustments for salary steps & CPI

- **Personnel Benefits** - 10.2% increase due to rate increases in medical & dental plans

- **Other Services** - 25.4% reduction due to decrease in Professional Services & Travel categories

- **Interfund Charges** - 34.0% increase due to restoring assessments for computer & equipment replacements offset by reduction in insurance assessment based on L & I hours

General & Street Funds 2004 Budget

Dept: Executive Division: Record Services

Description	2003 Bgt	2003 YE	2004 Bgt	%Chg
Salaries & Wages	$54,360	$53,347	$54,360	0.0%
Personnel Benefits	13,894	13,774	15,439	11.1%
Supplies	2,000	1,500	1,800	-10.0%
Other Services	3,230	4,715	3,495	8.2%
Interfund Charges	9,936	9,936	8,008	-19.4%
Total Expenditures	**$83,420**	**$83,272**	**$83,102**	**-0.4%**

General & Street Funds 2004 Budget

Dept: Executive   Division: Record Services

Analysis of Budget Changes:

- **Salaries & Wages** - $1,200 reduction in overtime offset by preliminary adjustment for non-representative employee TCC
- **Personnel Benefits** - 11.1% increase due to rate increases in medical & dental plans
- **Other Services** - 8.2% increase due to extended use of records storage vendor
- **Interfund Charges** - 19.4% net decrease due to restoring computer replacement assessment offset by reduction in insurance assessment based on L & I hours

General & Street Funds 2004 Budget

Dept: Executive Division: Personnel Services

Description	2003 Bgt	2003 YE	2004 Bgt	%Chg
Salaries & Wages	$89,016	$91,300	$97,287	9.3%
Personnel Benefits	25,152	25,300	28,699	14.1%
Supplies	2,100	1,300	1,400	-33.3%
Other Services	8,615	5,810	9,555	10.9%
Interfund Charges	3,800	3,800	4,384	15.4%
Total Expenditures	**$128,683**	**$127,510**	**$141,325**	**9.8%**

General & Street Funds 2004 Budget

Dept: Executive Division: Personnel Services

Analysis of Budget Changes:

- **Salaries & Wages** - 9.3% increase due to employee reclassification, step increases, & preliminary adjustment for non-representative employee TCC
- **Personnel Benefits** - 14.1% increase due to rate increases in medical & dental plans
- **Other Services** - 10.9% increase for professional services addressing preventative safety measures & legal labor issues
- **Interfund Charges** - 15.4% increase due to restoring computer replacement assessment offset by decrease in insurance assessment based on L & I hours

General & Street Funds 2004 Budget

Dept: Executive Division: Central Services

Description	2003 Bgt	2003 YE	2004 Bgt	%Chg
Supplies	$4,825	$4,300	$4,800	-0.5%
Other Services	73,830	62,730	56,170	-23.9%
Operating Tsf	10,000	20,000	20,000	100.0%
Total Expenditures	**$88,655**	**$87,030**	**$80,970**	**-8.7%**

Attachment 12

General & Street Funds 2004 Budget
Dept: Executive   Division: Central Services

Analysis of Budget Changes:

- **Other Services** - 23.9% decrease for telephone lines due to consolidation of T-1 lines and reduction in operating rentals & leases as a result of two-year extension for copier lease

- **Operating Transfers** - 100.0% increase to set-up required accumulated reserves for replacing telephone system.

General & Street Funds 2004 Budget

Dept: Executive Division: Community Information

Description	2003 Bgt	2003 YE	2004 Bgt	%Chg
Other Services	$56,500	$70,400	$59,550	5.4%
Total Expenditures	**$56,500**	**$70,400**	**$59,550**	**5.4%**

Analysis of Budget Changes:

- 5.4% increase due to increases in cable consultant & city council meeting video taping services offset by reductions in postage & costs for producing the "City Currents"

General & Street Funds 2004 Budget

Department: Executive

Unmet Needs

<u>Record Services:</u>

- Scanner & software for records preservation - $1,250

<u>Personnel Services:</u>

- Citywide employee training on workplace issues - $1,500

Airport Defense Fund 2004 Budget

Description	2003 Bgt	2003 YE	2004 Bgt	%Chg
Airport Defense Activities:				
General Fund	$0	$172,065	$0	0.0%
Airport Defense Fund	0	0	______	___%
Total Expenditures	**$0**	**$172,065**	**$______**	**___%**

Airport Defense Fund Balance Analysis	
2004 Beginning Fund Balance	$143,634
2004 Interest Revenue	2,150
Total Available Fund Balance	$145,784

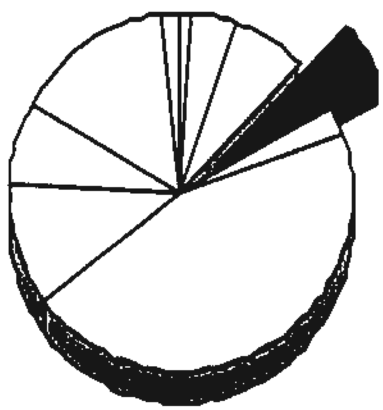
Attachment 16

General & Street Funds 2004 Budget

Department: Finance

PERCENT OF BUDGET

5.0%



2004 Operating Budget

$14.4 Million

Expenditures by Division:

Division	2003	2004	Chg
Financial Svc	$591,257	$652,324	10.3%
Memberships	30,756	33,805	9.9%
Fire Control	20,000	27,000	35.0%
Pollution Cntrl	10,524	10,556	0.3%
Total	$652,537	$723,685	10.9%

Staffing Levels:

Financial Svc	6.8	6.8	0.0

General & Street Funds 2004 Budget

Dept: Finance Division: Financial Services

Description	2003 Bgt	2003 YE	2004 Bgt	%Chg
Salaries & Wages	$360,443	$352,000	$376,599	4.5%
Personnel Benefits	113,090	103,485	121,971	7.9%
Supplies	5,250	5,250	5,250	0.0%
Other Services	83,695	93,725	114,340	36.6%
Interfund Charges	28,779	28,779	34,164	18.7%
Total Expenditures	**$591,257**	**$583,239**	**$652,324**	**10.3%**

General & Street Funds 2004 Budget

Dept: Finance   Division: Financial Services

Analysis of Budget Changes:

- **Salaries & Wages** - 4.5% increase due to step increases & preliminary adjustment for non-representative employee TCC
- **Personnel Benefits** - 7.9% increase due to rate increases in medical & dental plans
- **Other Services** - 36.6% increase primarily due to increased costs for state audit and addition of new internet program for providing lien information to title companies offset by revenues
- **Interfund Charges** - 18.7% net increase due to restoring assessment for computer replacements offset by reduction in insurance assessment based on L & I hours

General & Street Funds 2004 Budget

Department: Finance
Unmet Needs

- Temporary assistance with implementation of GASB 34 - $10,000

- Business Continuity & Disaster Recovery Plan - $50,000

General & Street Funds 2004 Budget

Dept: Finance Division: Misc Memberships

Description	2003 Bgt	2003 YE	2004 Bgt	%Chg
Other Services	$30,756	$29,867	$33,805	9.9%
Total Expenditures	**$30,756**	**$29,867**	**$33,805**	**9.9%**

Analysis of Budget Changes:

- 9.9% increase relates primarily to membership fee increases for AWC & Suburban Cities Association

General & Street Funds 2004 Budget

Dept: Finance Divisions: Fire & Pollution Control

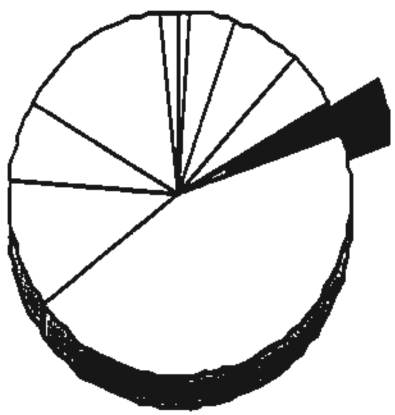
Description	2003 Bgt	2003 YE	2004 Bgt	%Chg
Intergovernmental Services:				
Fire Control	$20,000	$20,000	$27,000	35.0%
Pollution Control	10,524	10,524	10,556	0.3%
Total Expenditures	**$30,524**	**$30,524**	**$37,556**	**23.0%**

Analysis of Budget Changes:

- 23% increase relates primarily to increased costs for King County fire investigation services

General & Street Funds 2004 Budget
Department: Legal Services

PERCENT OF BUDGET
2.7%



2004 Operating Budget
$14.4 Million

Expenditures by Division:

Division	2003	2004	Chg
Legal	$314,823	$345,085	9.6%
DV Advocate	49,992	43,488	-13.0%
Total	$364,815	$388,573	6.5%

Staffing Levels:

Legal	3.0	3.0	0.0
DV Advocate	0.9	0.8	-0.1

General & Street Funds 2004 Budget

Dept: Legal Services Division: Legal

Description	2003 Bgt	2003 YE	2004 Bgt	%Chg
Salaries & Wages	$192,873	$192,873	$204,696	6.1%
Personnel Benefits	46,803	47,139	52,539	12.3%
Supplies	4,000	5,000	5,600	40.0%
Other Services	55,690	56,830	60,920	9.4%
Interfund Charges	15,457	15,457	21,330	38.0%
Total Expenditures	**$314,823**	**$317,299**	**$345,085**	**9.6%**

Attachment 24

General & Street Funds 2004 Budget

Dept: Legal Services Division: Legal

Analysis of Budget Changes:

- **Salaries & Wages** - 6.1% increase due to step increases & preliminary adjustment for non-representative employee TCC
- **Personnel Benefits** - 12.3% increase due to rate increases in medical & dental plans
- **Supplies** - 40% increase for bound volumes of legal decisions, RCW, WAC, other legal publications
- **Other Services** - 9.4% increase due to increased costs for prosecution services and addition of Hearing Examiner contract services
- **Interfund Charges** - 38% increase due to restoring assessment for computer replacements and change in insurance assessment based on L & I hours

Attachment 25

General & Street Funds 2004 Budget

Dept: Legal Services Division: DV Advocate

Description	2003 Bgt	2003 YE	2004 Bgt	%Chg
Salaries & Wages	$40,339	$38,095	$34,183	-15.3%
Personnel Benefits	9,163	8,900	9,005	-1.7%
Supplies	200	100	100	-50.0%
Other Services	290	390	200	-31.0%
Total Expenditures	**$49,992**	**$47,485**	**$43,488**	**-13.0%**

Analysis of Budget Changes:

- 13% decrease relates to reduction in staffing levels
- Formerly funded in Grant Control Fund
- Program funded by federal grant, CTED, & Court Fees

General & Street Funds 2004 Budget

Department: Legal Services

Unmet Needs

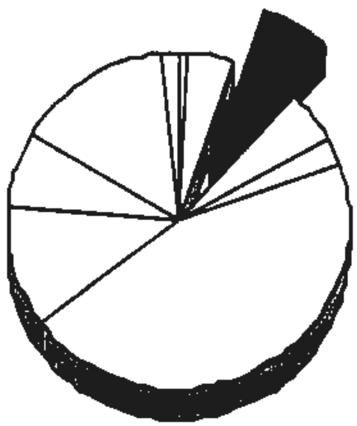
- Domestic violence advocate full-time status- $57,600
- Restore 0.3 full-time equivalent file clerk - $8,800
- Improved office lighting - $________

General & Street Funds 2004 Budget

Department: Judicial

PERCENT OF BUDGET

6.6%



2004 Operating Budget

$14.4 Million

Expenditures by Division:

Division	2003	2004	Chg
Court	$403,397	$416,815	3.3%
Jail Svcs	600,000	530,000	-11.7%
Total	$1,003,397	$946,815	-5.6%

Staffing Levels:

Court	3.9	3.9	0.0

General & Street Funds 2004 Budget

Dept: Judicial Division: Municipal Court

Description	2003 Bgt	2003 YE	2004 Bgt	%Chg
Salaries & Wages	$176,454	$181,689	$187,241	6.1%
Personnel Benefits	55,237	43,674	58,989	6.8%
Supplies	5,950	10,050	5,660	-4.9%
Other Services	150,450	142,468	148,420	-1.3%
Interfund Charges	15,306	15,306	16,505	7.8%
Total Expenditures	**$403,397**	**$393,187**	**$416,815**	**3.3%**

General & Street Funds 2004 Budget

Department: Judicial: Municipal Court

Analysis of Budget Changes:

- **Salaries & Wages** - 6.1% increase due to employee reclassification, step increases & preliminary adjustment for non-representative employee TCC
- **Personnel Benefits** - 6.8% increase due to rate increases in medical & dental plans
- **Interfund Charges** - 7.8% increase due to restoring assessment for computer replacements and change in insurance assessment based on L & I hours

General & Street Funds 2004 Budget

<u>Dept</u>: Judicial <u>Division</u>: Jail Services

Description	2003 Bgt	2003 YE	2004 Bgt	%Chg
Intergovernmental Services:				
King County	$472,000	$285,520	$283,000	-40.0%
Yakima	126,000	168,800	233,500	85.3%
Renton	2,000	13,540	13,400	570.0%
Enumclaw	0	100	100	N/A
Fife	0	1,040	0	0.0%
Total Expenditures	**$600,000**	**$469,000**	**$530,000**	**-11.7%**

Analysis of Budget Changes:

- Migration from King County jail services to alternative sites

General & Street Funds 2004 Budget

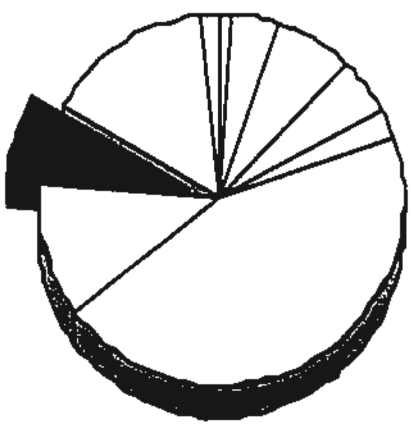
Department: Judicial
Unmet Needs

- **Implement video conferencing program**

Program Analysis:	One-Time	On-Going
Equipment	$20,000	
Increase in Judge Hours		$13,520
Eliminate Service w/Tukwila		-14,400
Jail Savings		-7,900
Net Costs	$20,000	$-8,780

General & Street Funds 2004 Budget
Department: Community Development

PERCENT OF BUDGET
7.4%



2004 Operating Budget
$14.4 Million

Expenditures by Division:

Division	2003	2004	Chg
Plan Dev	$110,292	$125,684	14.0%
Dev Svcs	334,096	350,173	4.8%
Bldg Div	544,783	590,291	8.4%
Total	$989,171	$1,066,148	7.8%

Staffing Levels:

Plan Dev	0.9	0.9	0.0
Dev Svcs	4.3	4.3	0.0
Bldg Div	6.3	6.3	0.0

General & Street Funds 2004 Budget

Dept: Community Development Division: Plan Dev

Description	2003 Bgt	2003 YE	2004 Bgt	%Chg
Salaries & Wages	$63,218	$63,218	$64,000	1.2%
Personnel Benefits	16,648	16,648	18,504	11.1%
Supplies	4,260	4,050	6,750	58.5%
Other Services	10,480	14,300	16,610	58.5%
Interfund Charges	15,686	15,686	19,820	26.4%
Total Expenditures	**$110,292**	**$113,902**	**$125,684**	**14.0%**

General & Street Funds 2004 Budget

Dept: Community Development Division: Plan Dev

Analysis of Budget Changes:

- **Salaries & Wages** - 1.2% increase due to preliminary adjustment for non-representative employee TCC
- **Personnel Benefits** - 11.1% increase due to rate increases in medical & dental plans
- **Supplies** - 58.5% increase due to purchase of needed software
- **Other Services** - 58.5% increase primarily due to professional services for support of Business Development Center at HCC
- **Interfund Charges** - 26.4% increase due to restoring assessment for computer & equipment replacements and change in insurance assessment based on L & I hours

General & Street Funds 2004 Budget

Dept: Community Development Division: Dev Services

Description	2003 Bgt	2003 YE	2004 Bgt	%Chg
Salaries & Wages	$241,220	$244,220	$252,283	4.6%
Personnel Benefits	64,673	58,360	59,858	-7.4%
Supplies	4,650	5,137	4,400	-5.4%
Other Services	12,010	11,892	20,645	71.9%
Interfund Charges	11,543	11,543	12,987	12.5%
Total Expenditures	**$334,096**	**$331,152**	**$350,173**	**4.8%**

General & Street Funds 2004 Budget

Dept: Community Development Division: Dev Services

Analysis of Budget Changes:

- **Salaries & Wages** - 4.6% increase due to employee reclassification & preliminary adjustment for non-representative employee TCC
- **Personnel Benefits** - 7.4% decrease due to change in dependent coverage offset by rate increases in medical & dental plans
- **Other Services** - 71.9% increase primarily due to professional services for Hearing Examiner contract services
- **Interfund Charges** - 12.5% increase due to restoring assessment for computer replacements and change in insurance assessment based on L & I hours

General & Street Funds 2004 Budget

Dept: Community Development Division: Bldg Division

Description	2003 Bgt	2003 YE	2004 Bgt	%Chg
Salaries & Wages	$366,003	$349,003	$372,240	1.7%
Personnel Benefits	110,750	110,750	127,606	15.2%
Supplies	10,060	9,600	22,000	118.7%
Other Services	32,700	30,350	30,540	-6.6%
Interfund Charges	25,270	25,270	37,905	50.0%
Total Expenditures	**$544,783**	**$524,973**	**$590,291**	**8.4%**

General & Street Funds 2004 Budget

Dept: Community Development Division: Bldg Division

Analysis of Budget Changes:

- **Salaries & Wages** - 1.7% increase due to preliminary adjustment for non-representative employee TCC
- **Personnel Benefits** - 15.2% increase due to rate increases in medical & dental plans
- **Supplies** - 118.7% increase is primarily for the 2003 International Building Code Reference manuals
- **Other Services** - 6.6% decrease relates to the 2003 efficiency study offset by increases for professional inspection & plan review assistance and Sierra permitting software support
- **Interfund Charges** - 50% increase due to restoring assessments for computer & equipment replacements and change in insurance assessment based on L & I hours

General & Street Funds 2004 Budget

Department: Community Development

Unmet Needs

Buil ing Division

- **Add limited term building inspector**

Program Analysis:	One-Time	On-Going
Staffing (net of L& I Training)		$32,800
Desk/Equipment	$5,000	
Used Vehicle/Mtc & Repl Reserves	12,000	$5,000
Training/Books	5,000	
Net Costs	$22,000	$37,800

General & Street Funds 2004 Budget

Department: Community Development

Unmet Needs

Building Division:

- Upgrade permit specialist position to permit coordinator - $3,224
- Replace two building division cars with SUVs - $20,800 (net difference in Equipment Replacement Funds)
- Add permit technician position - $54,000
- Convert Sierra permitting system to Eden System - $157,000

General & Street Funds 2004 Budget

Department: Community Development

Unmet Needs

Development Services:

- Purchase police radio for code enforcement officer - $2,500
- Add limited term economic development coordinator - $98,400

Plan Development:

- Zoning code re-write - $100,000
- Purchase new file cabinets - $10,000

City of Des Moines

2004 Budget

Debt - Internal Service - Reserves

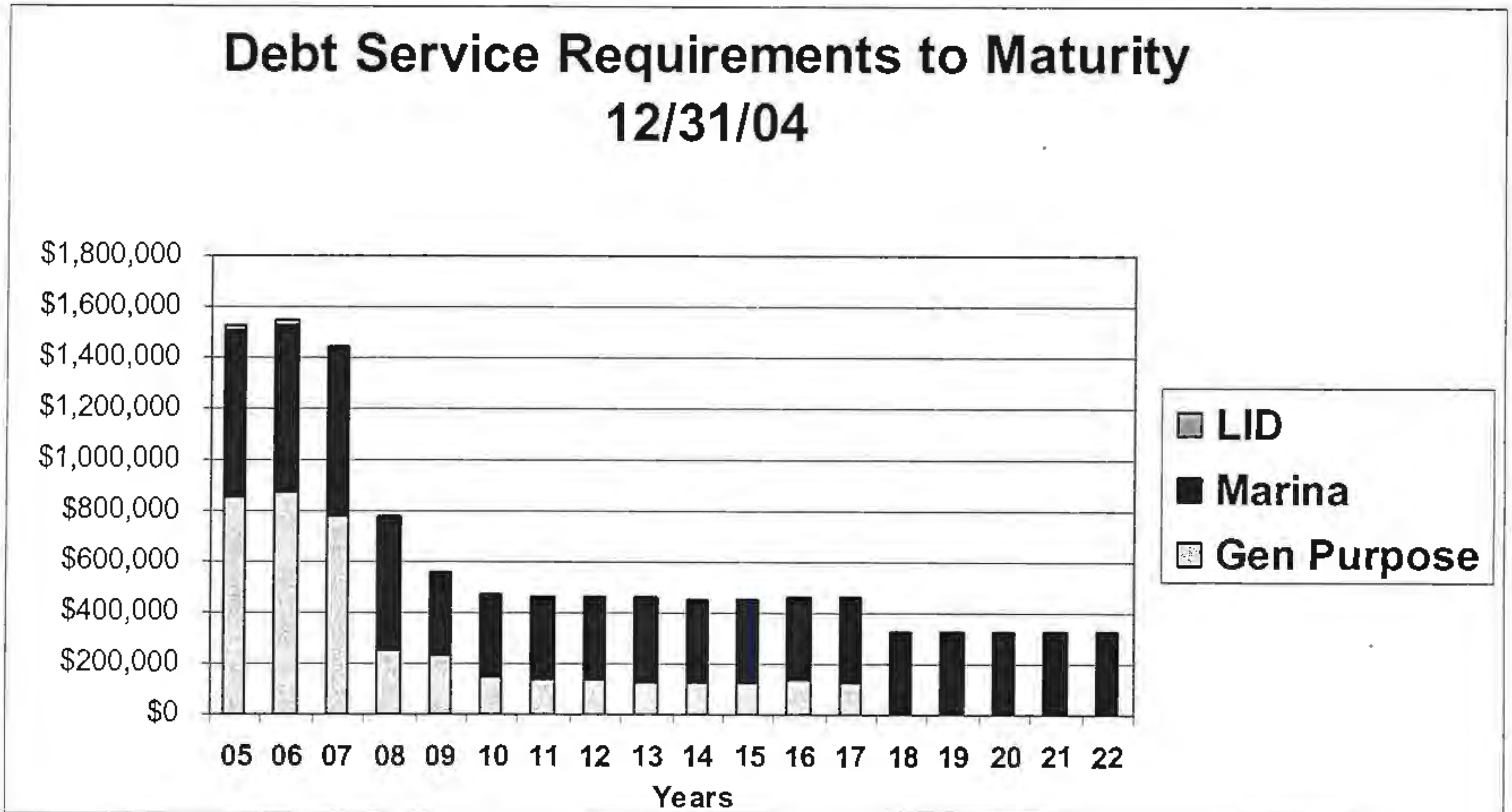
Attachment A

Debt Service
2004 Budget

Item	Authorized	OS 12/31/03	2004 Principal	2004 Interest	OS 12/31/04
General Purpose	$10,309,000	$5,858,342	$2,709,188	$218,762	$3,361,754
Marina	6,410,000	5,550,000	435,000	222,738	5,115,000
SWM	70,500	15,667	15,667	0	0
LID	214,320	60,000	20,000	3,600	40,000
Total	$17,003,820	$11,484,009	$3,179,855	$445,100	$8,516,754

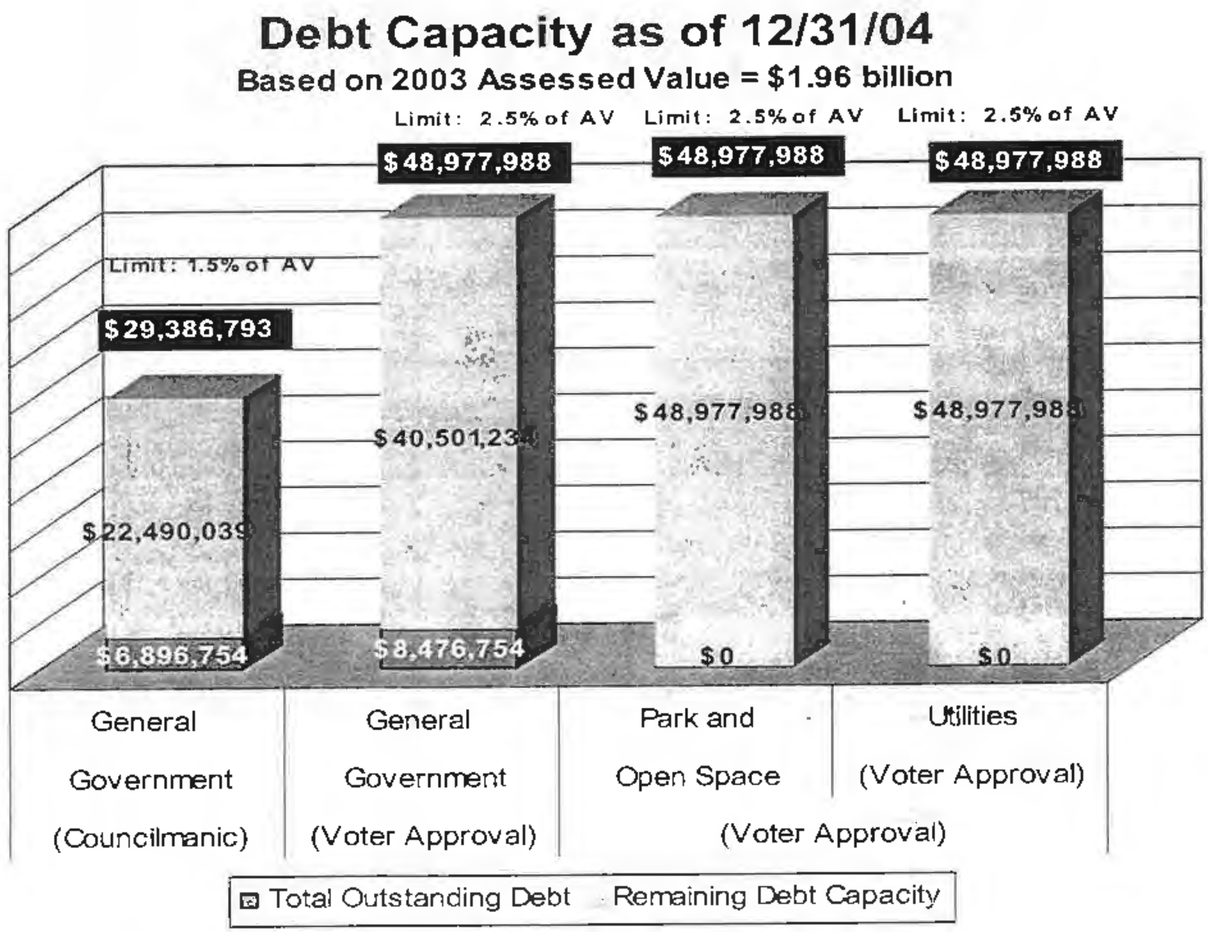
Attachment B

Debt Service
2004 Budget



Attachment C

Debt Service
2004 Budget



Attachment D

Computer Equipment Operations Fund
2004 Budget

Description	2003 Bgt	2003 YE	2004 Bgt	%Chg
Salaries & Wages	$57,492	$57,492	$58,800	2.3%
Personnel Benefits	17,673	17,673	19,732	11.7%
Supplies	7,050	6,575	9,300	31.9%
Other Services	56,500	55,670	60,460	7.0%
Interfund Charges	2,888	2,888	13,660	373.0%
Capital Outlay	8,000	9,500	5,000	-37.5%
Total Expenditures	**$149,603**	**$149,798**	**$166,952**	**11.6%**

Staffing Levels	1.0	1.0	1.0	0.0

Attachment E

Computer Equipment Operations Fund
2004 Budget

Analysis of Budget Changes:

- **Salaries & Wages** – 2.3% increase due to preliminary adjustment for non-representative employee TCC
- **Personnel Benefits** – 11.7% increase due to rate increases in medical & dental plans
- **Supplies** – 31.9% increase is due to the network upgrades planned in 2004
- **Other Services** - 7% increase due to increase in Professional Services for computer consultants necessary for network upgrades
- **Interfund Charges** - 373% increase due to indirect cost assessment to the General Fund, restoring assessments for computer replacement, and a reduction in insurance assessment based on L & I hours
- **Capital Outlay** – 37.5% decrease is due to the completion of the new city web-site

Attachment F

Computer Equipment Capital Fund
2004 Budget

Assessment By Fund:

(138 pieces of equipment)

General Fund	$86,768
Street Fund	1,998
Surface Water Mgt	1,528
Equipment Rental	1,410
Computer Operations	940
Marina	4,700
TOTAL ASSESSMENTS	**$97,344**

2004 Est Beg Fund Bal	**$ 61,557**
2004 Revenues	
Assessments	**$ 97,344**
Interest	**$ 1,300**
2004 Expenditures	**$ 47,800**

(43 pieces of equipment to be replaced including 3 servers and 3 pieces of network equipment)

2004 Est End Fund Bal	**$112,401**

Self Insurance Fund 2004 Budget

Description	2003 Bgt	2003 YE	2004 Bgt	%Chg
Insurance Expense	$330,416	$330,678	$334,894	1.4%
Other Services	77,532	74,441	32,100	-58.6%
Total Expenditures	**$407,948**	**$405,119**	**$366,994**	**-10.0%**

Self Insurance Fund Balance Analysis	
2004 Beginning Fund Balance	$ 67,270
2004 Department Assessments	401,873
2004 Interest	1,400
2004 Expenses	366,944
Total Available Fund Balance	$103,549

Attachment H

Unemployment Compensation Fund
2004 Budget

Description	2003 Bgt	2003 YE	2004 Bgt	%Chg
Unemployment Claims	$20,000	$11,000	$20,000	0.0%
Total Expenditures	**$20,000**	**$11,000**	**$20,000**	**0.0%**

Unemployment Comp Fund Balance Analysis	
2004 Beginning Fund Balance	$269,129
2004 Department Assessments	21,000
2004 Interest	4,000
2004 Expenses	20,000
Total Available Fund Balance	$274,129

Attachment I

Revenue Stabilization Fund 2004 Budget

2004 Full Funding	Revenue	%	Years	Total
Retail Sales Tax	$1,426,000	10%	3	$427,800
Building Permits	500,000	10%	3	150,000
Plan Review Fees	125,000	10%	3	37,500
State Assistance	137,500	10%	3	41,250
Vehicle Fuel Tax	411,000	10%	3	123,300
Interest Earnings	110,000	10%	3	33,000
Total 2004 Funding				**$812,850**
Additional Revenues:				
State Shared	$280,000	10%	3	$28,000
New 2004 Funding				**$840,850**

Attachment J

Revenue Stabilization Fund 2004 Budget

Revenue Stabilization Fund Balance Analysis	
2004 Beginning Fund Balance	$1,264,503
2004 Interest	19,000
2004 Expenses	0
Total Available Fund Balance	$1,283,503

Attachment K

Facility Repair and Replacement Fund
2004 Budget

Description	2003 Bgt	2003 YE	2004 Bgt	%Chg
Repair Expense	$0	$4,164	$20,000	N/A
Operating Transfers	80,000	80,000	0	-100.0%
Total Expenditures	**$80,000**	**$84,164**	**$20,000**	**-75.0%**

Facility Rpr & Repl Fund Balance Analysis	
2004 Beginning Fund Balance	$159,217
2004 Department Assessments	65,033
2004 Interest	2,700
2004 Expenses	20,000
Total Available Fund Balance	$206,950

Attachment L

Facility Repair and Replacement Fund
2004 Budget

Assessments By Fund $.70 per square foot	
General Fund	$57,565
Street Fund	3,732
Equipment Rental Operations	1,410
Surface Water Management Fund	2,326
Total 2004 Assessments	$65,033

Attachment M

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT:
Traffic Unit Revenue

FOR AGENDA OF: October 30,2003

DEPT. OF ORIGIN: Municipal Court

ATTACHMENTS:

DATE SUBMITTED: October 21, 2003

CLEARANCES:
[X] Legal
[X] Municipal Court

APPROVED BY CITY MANAGER
FOR SUBMITTAL:

PURPOSE AND RECOMMENDED ACTION

The purpose of this agenda item is to report the revenue collected from the citation issued by the Des Moines Traffic Unit.

BACKGROUND

In 2001, the Police Department presented before the City Council a request to put together a Traffic Unit. By putting together the traffic unit, this would help reduce the complaints the police department was receiving about speeding motorists driving through neighborhoods.

DISCUSSION

In July of this year, Council requested the expenditures and revenue reports for the Traffic Unit. The expenditures for the Traffic Unit were provided by the Finance Department, a budget was specially created for the Traffic Unit so that we could monitor all costs. Some of those costs included two traffic officers, two court clerks, a records clerk, prosecutions and public defender costs. The revenue information is from 2002, due to the fact DISCIS is not setup to generate revenue reports for specific officers, the Court manually imported the information from DISCIS into excel, we also had the citations issued from the Traffic Unit imported into excel from Spillman. The data was then merged together and then we filtered out the non-traffic unit revenue, which then gave us the amount of revenue that has been collected from the citations issued by the traffic unit.

FINANCIAL IMPACT

The costs for the traffic unit in 2002 was $423,069. The revenues collected from the traffic unit citations for 2002 was $432,000. The overall revenue for the traffic unit and patrol for 2002 was $481,216.

RECOMMENDATION (OR CONCLUSION)

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT:
Towing/Impound Services

ATTACHMENTS:
1) Evaluation Spread Sheet
2) Memorandum From Commander Tucker Regarding RFP Evaluation

FOR AGENDA OF: October 30, 2003

DEPT. OF ORIGIN: Police

DATE SUBMITTED: October 16, 2003

CLEARANCES:
[ ] Legal LAM
[X] Police
APPROVED BY CITY MANAGER FOR SUBMITTAL:

Purpose and Recommendations:

The purpose of this report is to inform the City Council of the results of the Request for Proposals for towing/impound services and to recommend RoadOne (Dick's Highline Towing) be awarded the contract.

Recommended Motion:

"I move that the City Council award the towing and impound contract to RoadOne (Dick's Highline Towing), and authorize the City Manager to finalize and sign the agreement."

Alternative Motions:

"I move to reject all responses to RFP Number PD-03-001 and direct staff to re-issue the RFP with the following changes: ______________________________."

"I move to reject all responses to RFP Number PD-03-001"

Background:

Since the late 1950's, the City of Des Moines has utilized the services of Pete's Towing for towing and impound services. These services include moving/towing vehicles that have been involved in accidents, towing abandoned vehicles, towing vehicles that are being impounded (driver's arrested for various offences/warrants), and towing city vehicles for various reasons. Pete's Towing provided these services competently and professionally throughout the years. These services, however, were rendered without a written contract nor were they put out for competitive bid.

As a result of an action brought by a citizens group and a Superior Court Judge's ruling that the relationship between the City of Des Moines and the previous towing/impound provider (Pete's Towing) violated state law, the city currently receives towing/impound services from RoadOne (Dick's Highline). These services are being provided without a written agreement between RoadOne and the City.

On September 4, 2003 Council directed staff to issue an RFP for towing/impound services with some minor modifications to previous RFP documents. This RFP was modified and let to bid with a closure date of September 25, 2003. The City received three responses to the RFP. These responses have been reviewed with the recommendations presented before council.

Discussion:

Staff conducted an in-depth review of the proposals during the first week of October. This review included site visits, contacts with the managers, equipment review, and reference contacts. In conducting these reviews it was found only two contractors meet all proposal standards (Airport Towing and RoadOne). In the review process a comparison spreadsheet was constructed outlining the essential criteria requirements each tow company had to meet (see attached *Evaluation Spread Sheet*). RoadOne (Dick's Highline) provided the best response to the pricing schedule. For example a Class "A" Tow from RoadOne (Dick's Highline) is listed as $84.00, and an Airport Towing Class "A" Tow is $285.59. The attached memo from Commander Tucker summarizes the criteria, issues, and concerns with each responding tow company.

Financial Impact:

The financial impact to the City of Des Moines and the citizens who have their vehicles towed will be reduced since the fees RoadOne (Dicks Highline) proposed are lower than the amount currently being charged.

Alternatives:

Council can direct staff to issue an RFP with the same requirements and timeframes as RFP Number PD-03-001 in hopes of gaining a greater response, or direct that certain changes be made to the document before the new RFP is issued. Council could elect to keep the situation as it is by continuing to have RoadOne provide towing/impound services without a written agreement.

Recommendation:

Staff recommends towing/impound services be provided to the City of Des Moines and our customers via a written contract. Entering into a written agreement with RoadOne (Dick's Highline) would accomplish this recommendation.

Original RFP documents are available for examination by contacting Commander Kevin Tucker at Des Moines Police Department.

MEMORANDUM

Date: October 16, 2003

To: Tony Piasecki
City Manager

From: Kevin Tucker
Commander

Subject: October 2003 Towing RFP Review

At the close of the RFP we received Three (3) bid submittals (September 25, 2003 at 1630 hours). The three responding bids were from Dick's Highline Towing, Airport Towing and Gene's Towing. I have reviewed all three bid documents, conducted site visits on two out of the three. (I did not conduct site visit on Gene's Towing due to distance from City of Des Moines as well as being non-responsive in the bid submittal). While at each site I talked with the managers or owners to gain clarification on issues in the RFP as well as walked the business sites.

There are two bids which meet all specification required by the City of Des Moines. These two are Airport Towing and Dicks Highline Towing. Due to the fact the City of Des Moines towing services would only amount to approximately 2 tows per day, most of the tow company's would not add any more drivers or equipment to their fleet. The impact of adding our tow services would be minimal to each company.

RoadOne (Dicks Highline Towing)

- Meets all RFP requirements

Airport Towing

- Meets all RFP requirements

There were two bids which did not meet the specifications listed in the RFP. These two were Airport Towing (Alternate Proposal) and Gene's Towing.

Airport Towing (Alternate Proposal)

- Will charge registered owner of the vehicle for second tow from city garage
- In house dispatching 8:00 a.m. to 6:00 p.m. except Saturday, Sunday and holidays
- All abandoned vehicles will be towed to secondary storage lot in south Seattle
- City of Des Moines will make every effort to impound abandoned vehicles during non peak business hours
- Winching charged at ¼ hour minimum with other services and ½ hour minimum without other services

Gene's Towing

- Did not complete and return form "Specifications For Vehicle Towing And Impound Services"
- Did not complete and return form "Exceptions"
- Did not submit "Proposal Guarantee"
- Excess of 4 miles from city limit
- Only one Class "A" Tow Truck at Federal Way site
- Closest Class "C" Tow Truck in Puyallup, Tacoma or Lakewood
- Did not provide list of employees for records check

Recommendations

After reviewing all proposals I believe the best overall package and value will be RoadOne (Dicks Highline). Dicks Highline is by far the cheapest for all services over the other proposals. The majority of all tows will be the class "A" tows which will be charged to the city as well as our customers at the rate of $84.00 per tow. The next closest Class "A" tow is Airport Towing at $285.59. I also subtotaled all contractor rates per proposal and found Dicks Highline came in at $436.00 for all services. The next closest was Airport Towing at $1,651.40.

RoadOne (Dicks Highline) also has all the necessary equipment to provide services as well as 43 other pieces of equipment under subcontract through their parent company. Their storage yard and covered secure storage areas are adequate for our customers as well as our in-house needs.

Attachments:

1. 3-page comparison matrix
2. RFP Road One (Dicks Highline)
3. RFP Airport Towing
4. RFP Gene's Towing

	RoadOne (Dicks Highline)	Genes Towing Inc	Airport Towing	Airport Towing (Alternate)
Contractor Rates				
Service Calls ($)	$50.00	$48.50	$69.50	$59.95
Towing Includes 1st Hour Class "A" Truck	$84.00	$92.50	$285.59	$121.30
Towing Includes 1st Hour Class "B" Truck	$77.00	$145.00	$325.24	$160.95
Towing Includes 1st Hour Class "C" Truck	$77.00	$243.00	$396.24	$231.95
Standby Time 15 minute intervals after 1st hour Class "A" & "B" Truck	$16.00	$23.13 (Class A) $36.25 (Class B)	$76.36	$30.33
Standby Time 15 minute intervals after 1st hour Class "C" Truck	$16.00	$60.75	$99.06	$57.99
Winching (15 minute intervals)	$19.00	$36.25	$76.36	$60.66
Drive Line removal	$ 0	$ 0	$40.00	$40.00
Dolly Rental-included in tow tee	$ 0	$ 0	$40.00	$40.00
Mileage Fee (after 10 Miles)	$2.00	$ 0	$4.00	$4.00
Vehicle Release between 8:00 p.m. and 8:00 a.m.	$35.00	$56.50	$142.80	$60.65
Storage (1st 12 hours no charge) Amount for each additional 24-hour period. Inside Storage	$30.00	$45.00	$57.95	$48.95
Storage (1st 12 hours no charge) Amount for each additional 24-hour period. Outside Storage	$30.00	$35.00	$38.30	$33.75
Total Package Costs	*$436.00*	*$821.88*	*$1,651.40*	*$950.48*

Other Conditions	RoadOne (Dicks Highline)	Genes Towing Inc	Airport Towing	Airport Towing (Alternate)
(Forms Completed?) *Specifications For Vehicle Towing And Impound Services*	YES	NO, DID NOT RETURN WITH BID	YES	YES
(Forms Completed?) *Instructions Regarding Proposals*	YES	YES	YES	YES
(Forms Completed?) *Special Provisions*	YES	YES	YES	YES
(Forms Completed?) *Non-Collusion Affidavit*	YES	YES	YES	YES
(Forms Completed?) *Certificate As To Corporate Principal*	YES	YES	YES	YES
(Forms Completed?) *Exceptions*	YES	NO, DID NOT RETURN WITH BID	YES	YES
(Forms Completed?) *Proposal Form*	YES	YES	YES	YES
Proposal Guarantee Submitted?	YES, Check for $5,000	NO, DID NOT SUBMIT	YES, Check for $5,000	YES, Check for $5,000
Sufficient Vehicles? (at least 3 Class "A" Tow Trucks with drivers on duty at all times)	YES, 6 Class A, with 31 on sub-contract	No, Not at Federal Way lot, Only 1 Class A at Federal Way Site	Yes, 5 Class A	Yes, 5 Class A

Other Conditions	RoadOne (Dicks Highline)	Genes Towing Inc	Airport Towing	Airport Towing (Alternate)
Class "C", by ownership, lease, purchase contract or temporary use agreement. (At all times)	Yes	YES, but based in Puyallup, Tacoma and Lakewood	Yes	Yes
24-7 dispatch office?	YES, Nextel Radios	N/A	YES, Nextel Radios	YES, Nextel Radios
20 minute response time?	YES, except rush hour	N/A	YES, except rush hour	YES, except rush hour
Storage Lot? (No further than 4 miles from the city limits)	YES, 2012 S. 146th St Seatac, WA 98168 3.7 driving miles	NO, 4.6 Miles from 272 and SR99 and 4.3 Miles from Redondo South	YES 817 S. 149th St, Burien, WA 98166 3.1 driving miles	YES, 817 S. 149th St, Burien, WA 98166 3.1 driving miles
Towing a vehicle to city garage and second tow to contractors storage lot considered one tow.	OK	OK	Will charge registered owner of the vehicle for second tow from city garage	Will charge registered owner of the vehicle for second tow from city garage
Physical Conditions and Security of storage lot?	OK	N/A	OK	OK
Shelter in good repairs and securable?	OK	N/A	OK	OK
Radio Equipment?	Nextel	N/A	Nextel	Nextel
Staff Records Checks Results?	YES	Did not Submit List of Employees	YES	YES
WSP Standards and Inspections within set guidelines?	YES	YES	YES	YES

NEW BUSINESS
Item #2

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Mount Rainier Pool

ATTACHMENTS:

A. Draft Pool Transfer Agreement Between King County and Mount Rainier Pool Contributors

B. Draft Interlocal Agreement by Mount Rainier Pool Contributors And Mount Rainier Pool Owners

C. Draft Agreement between Aquatics Management Group and Mount Mount Rainier Pool Owners Regarding the Operation of the Mount Rainier Pool

FOR AGENDA OF: October 30, 2003

DEPT. OF ORIGIN: City Manager's Office

DATE SUBMITTED: October 24, 2003

CLEARANCES:
[ ] ______________
[ ] ______________

APPROVED BY CITY MANAGER
FOR SUBMITTAL: ______________

Purpose and Recommendation

The purpose of this report is to present draft agreements for City Council discussion and direction regarding the Mount Rainier Pool. The agreements as drafted would provide for the cities of Des Moines, Normandy Park, and SeaTac to take ownership of the Pool, create a new version of the Mount Rainier Pool Contributors agreement between Des Moines, Normandy Park, SeaTac and the Highline School District to provide funding to offset anticipated operational deficits, and to contract with the Aquatics Management Group (AMG) to operate the Pool on behalf of the owners.

Suggested Motions: None. Staff is looking for direction from the City Council.

Background

In July 2002, King County Executive Ron Sims formally announced that King County was planning to close and "mothball" all Forward Thrust swimming pools located in incorporated areas of the County, including Mount Rainier Pool in Des Moines, by December 31, 2002, unless some other entity—for example a city or school district—agreed to take them over. The reason given for this proposed action was the County's budget problems. The County offered to give funds equal to the 2003 "mothball" costs plus some capital dollars to any entity that was willing to take title to a pool.

In December 2002, the Cities of Des Moines, Normandy Park, and SeaTac and the Highline School District entered into two separate agreements: one with King County in which the cities and the School District agreed to fund the County's projected 2003 operating deficit ($217,620, which includes the County's overhead charge) in exchange for the County keeping the Pool open and the second an agreement between the cities and the School District to determine how much each entity would contribute to funding the amount agreed to with the County. The belief was this would buy enough time for a longer-term solution to be found to keep the Pool open beyond 2003.

Discussion

Since the beginning of the year, the County has been operating the Mount Rainier Pool and the cities and the School District have been providing quarterly payments to fund the operating deficit.

One of the major road blocks to transferring the Mount Rainier Pool has been the issue of the lease King County has with the School District for the land the Pool sits on. The School District and the County have been negotiating since January to put together an agreement whereby the Mount Rainier Pool can be transfer to a 3rd party. These negotiations have taken longer than anyone had anticipated. Reports are that the School District and the County have come to terms and the Pool could be transfer to a willing 3rd party.

Since mid August, staff from the three cities and the School District have been working on potential transfer, ownership, funding, and operating agreements for the Mount Rainier Pool. Attached are the latest versions of these agreements. The agreement between the County and the School District will also name the entity (or entities) that will be taking title to the Pool and assuming the lease for the School District land. As of the writing of this agenda item, staff does not have a copy of that draft agreement.

The first agreement describes the transfer of the Pool from King County to the Cities of Des Moines, SeaTac and Normandy Park and the assignment of the lease with the School District. The second agreement details the financial arrangement between the cities and the School District to fund the project operating deficit of the Pool. In this agreement, Des Moines annual contribution is $75,000. The third agreement is between the three cities and the AMG for pool operations.

Alternatives

None offered at this time. Staff will be prepared to discuss potential alternatives at the October 30th City Council meeting. Additional information, including a discussion of liability and insurance issues and possible revisions to the agreements will be available after staff meets with representatives of Normandy Park, SeaTac and the School District on Monday, October 27, 2003. If the draft agreement between the County and the School District becomes available before the October 30th meeting, staff will provide it to the City Council.

Financial Impact

Des Moines' financial commitment would $75,000 per year for a minimum of three years, unless the operating agreement is extended or the owners decide to return the Pool to the County per the terms of the transfer agreement.

Recommendation and Concurrence

Staff seeks Council comment and input to these agreements.

First Draft – 9-30-03
Second Draft – 10-23-03

Pool Transfer Agreement Between
KING COUNTY and MOUNT RAINIER POOL OWNERS ("MRPO)"

1. PARTIES

This **Agreement** (hereinafter "Agreement") is made and entered into this day between **Mount Rainier Pool Owners**, a coalition of the cities of Des Moines, Normandy Park, and SeaTac, all Washington municipal corporations (hereinafter **"MRPO"**), and **King County**, a Washington municipal corporation, (hereinafter **"the County"**).

2. PURPOSE AND RECITALS:

2.1 The County, under the authority of federal, state and county laws, has acquired and developed a park, recreation and open space system, including ownership of the Mt. Rainier Pool located at Mt. Rainier High School in Des Moines, Washington;

2.2 The County's current budget crisis necessitates that it discontinue the operation and maintenance of the Mt. Rainier Pool as of December 31, 2003 and, if possible, transfer the ownership of the pool to another entity;

2.3 The Cities of Des Moines, Normandy Park and SeaTac have, through an Interlocal Agreement, created a coalition of cities known as "Mount Rainier Pool Owners" ("MRPO") for the purposes of owning and operating the Mount Rainier Pool, and said cities have notified the County that it wishes the County to transfer the ownership of the Mt. Rainier Pool to MRPO.

2.4 The above cities have further stated their willingness, together with the Highline School District and other contributors, to provide ongoing funding to MRPO to support the operation of the Mt. Rainier Pool for so long as such operation remains economically viable for MRPO or until there is a viable replacement for the Mt. Rainier Pool.

The parties agree as follows;

3. CONVEYANCE OF TITLE

3.1 Within thirty (30) days of execution of this Agreement and receipt of an executed assignment to MRPO of the underlying lease with Highline School District, described more fully in Exhibit A (the "Lease"), King County shall convey to MRPO, by deed, all of its ownership interest in the Mt. Rainier Pool ("the Pool"), described more fully in Exhibit B (the "Property Legal Description"):

3.2 The deed shall be in form and substance acceptable to both parties and shall contain the following specific covenants pertaining to use of the Mt. Rainier Pool:

ATTACHMENT A

3.2.1 "Grantee covenants that it shall abide by and enforce all terms, conditions and restrictions in King County Resolution ___ applicable to a transferee, including that MRPO covenants that the Property shall continue to be used for the purposes contemplated by Resolution ____, that the Property shall not be transferred or conveyed except by agreement providing that such lands shall continue to be used for the purposes contemplated by Resolution ____, and that the Property shall not be converted to a different use unless other equivalent lands and facilities within the County shall be provided."

3.2.2 "Grantee covenants that the primary use of the Property shall be to provide recreational swimming opportunities to the general public, and that it shall not charge fees for such use of the Property in excess of fees reasonably related to the cost of owning, operating and maintaining the Property."

3.2.3 "Grantee covenants that, except for reasonable periods of closure required for necessary maintenance, capital repair or to remedy threats to health or safety, the Property shall be open to the public for swimming during business hours comparable to those of other public pools in King County."

3.2.4 "Grantee covenants that it shall maintain the Property in good, clean, safe and sanitary condition and in compliance with all applicable laws, ordinances and regulations."

3.2.5 "The Grantee covenants that it shall place the preceding covenants in any deed transferring the Property or a portion of the Property; provided, however, that all such preceding covenants as to Mt. Rainier Pool shall terminate on __________, 2014?, the expiration of the original term under the Leases and the end of the contemplated useful life of the pools as stated in Resolution ____."

3.3 The foregoing covenants shall run with the land for the benefit of the County and the County shall have standing to enforce them.

4 LEASE ASSIGNMENT

4.1 The assignment of the Lease is contingent on written approval of the Highline School District. If such written approval is not obtained within thirty (30) days from the execution of this Agreement, the conveyance and assignment shall not be required until thirty (30) days after such written approval is obtained.

4.2 The assignment shall provide that any costs to mothball, close, and/or demolish the Pool at the end of the lease term shall be the responsibility of King County.

5 EQUIPMENT AND SUPPLIES

5.1 The Property being conveyed includes certain equipment and supplies used to operate and maintain the Pools. 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, as further described in Exhibit ____ hereto.

5.2 MRPO takes all equipment and supplies AS IS and WHERE IS and agrees that the County holds no future responsibility with regard to the equipment and supplies or any occurrence related to or resulting from use of the equipment and supplies.

6 BEST EFFORTS AND CONTINGENCY AGREEMENT

6.1 MRPO has agreed to accept transfer of the pool ownership and assignment of the lease on the following conditions:

6.1.1 MRPO will use its best efforts, with the cooperation and assistance of the cities and communities that will be served by the pool, to operate and maintain the pool at its current level of service to the public;

6.1.2 MRPO may, at any time, certify to the County in writing that: (1) it has used all reasonable and diligent efforts to continue to operate the Pool and to secure financial support therefor; (2) funds are not reasonably available to allow the continued operation of the Pool by MRPO; and (3) MRPO has been unable to assign its interests in the Pool to another operator or otherwise ensure the continued operation of the Pools as public pool. Thereafter, MRPO may elect, consistent with applicable legal requirements, to have title to the Pool and the rights and obligations under the lease revert to King County.

6.2 MRPO is solely responsible for its actions and determinations under this section.

7 NEW POOL CONTINGENCY

7.1 It is understood that one or more of the cities and/or school district that are providing operating funds to MRPO for Pool operations may construct a new pool in the future. If such new pool: a) operates as a public pool in the same manner as required for the Pool by this Agreement; b) is of comparable size and equivalent recreational value; and c) such city or district funds the new pool in lieu of providing continued funding levels to MRPO, the new pool shall constitute an equivalent replacement facility for the Pool located in such city as contemplated by Resolution ____. When the city withdraws funding from MRPO and the new pool is operational and open to the public, then as between the County and MRPO, the County will deem a closure of the Pool to be in compliance with its obligations to the County to continue operating the pool under this Agreement and the deeds and the assignment of the lease, but only as to the replaced Pool.

7.2 MRPO agrees to continue to maintain and operate the Pool in accordance with this Agreement until the city discontinues funding levels to MRPO and the new replacement city pool is operational and open to the public.

8 EXISTING RESTRICTIONS, AGREEMENTS, CONTRACTS OR PERMITS

8.1 MRPO shall abide by and enforce all terms, conditions, reservations, encumbrances, restrictions and covenants of title existing at the time of conveyance and/or in the deed of conveyance.

8.2 In addition to any other remedies available for breach of a real property covenant and regardless of the enforceability of the covenants in the deed, all such covenants shall also be considered contractual obligations with which MRPO must comply.

8.3 Breach of any such covenant or contractual obligation or breach of any provision of this Agreement shall entitle the County to seek any remedy in law or equity, including without limitation, damages and/or specific performance.

9 FINANCIAL ARRANGEMENT

9.1 As part of the consideration for MRPO's agreement to assume title to and to continue to operate and maintain the Mt. Rainier Pool at its expense, the County agrees to:

9.1.1 Transfer $50,000.00 to MRPO for the purpose of making capital improvements to the Mt. Rainier Pool. Such funds for capital improvements will be distributed to MRPO by December 31, 2004. Funds provided pursuant to this financial arrangement may be used only for the planning, construction, reconstruction, repair, rehabilitation or improvement of the Mt. Rainier Pool. Any such funds not so used shall be returned to the County, or transferred subject to the requirement that the transferee use the funds only for the specified purposes; and

9.1.2 Transfer to MRPO a one-time payment of $78,400.00 to be used for the operation and maintenance of the Pool. These funds will be distributed to MRPO no later than January 31, 2004. The basis for this payment is the County's estimated cost to mothball the pool in 2004.

9.2 Other than the funds provided pursuant to 9.1.1 and 9.1.2, the County shall have no obligation whatsoever to provide additional funds to MRPO relating to the Property.

9.3 MRPO shall provide the County with detailed and accurate records of all expenditures of funds provided by the County.

9.4 MRPO shall comply with all applicable laws, ordinances and regulations in using funds provided by the County including, to the extent applicable, those related to "public works," payment of prevailing wages and competitive bidding of contracts.

10 CONDITION OF PREMISES, OPERATIONS, MAINTENANCE, ETC.

10.1 MRPO 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, and improvements of the Property.

10.2 The County does not make and specifically disclaims any and all warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose, with respect to the Property or its condition, and no official, employee, representative or agent of King County is authorized otherwise.

10.3 MRPO acknowledges and agrees that except as indicated in Section 6, the County shall have no liability for, and that the MRPO 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 MRPO or the County.

10.4 The County shall make available, prior to December 18, 2003, to MRPO's representatives for interviews, the Pool Operators of the Mt. Rainier Pool and the employees of the County who manage and supervise those Pool Operators. The County shall instruct all such employees to fully cooperate with MRPO's representatives and to truthfully and completely answer all questions presented as they relate to the operations of the Pool and the condition of the Pool equipment, property, furnishings, fixtures and assets. The County shall make the Pool available for inspection by independent experts engaged at MRPO's expense to inspect the Pool.

11 ENVIRONMENTAL LIABILITY

11.1 "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.

11.2 Nothing in this agreement shall be deemed to waive any statutory claim for contribution that MRPO 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 prior to transfer of the Pool to MRPO. In making such claim, however, MRPO is barred from seeking recovery for costs that arise from MRPO having exacerbated the costs of remediation upon which a statutory claim for contribution is based as a result of MRPO performing construction activities on the Property or changing the use of the Property. Exacerbation shall not be deemed to include the mere discovery of contamination.

11.3 If MRPO 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. Prior to undertaking any remediation, the parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement.

11.4 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.

12 INDEMNIFICATION AND HOLD HARMLESS

12.1 King County shall indemnify and hold MRPO harmless from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever arising from those occurrences related to the Property that occurred prior to the effective date of conveyance of the Property to MRPO, except to the extent that indemnifying or holding MRPO harmless would be limited by Section 10 of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against MRPO or MRPO and King County, King County shall defend the same at its sole cost and expense and, if final judgment be rendered against MRPO and its officials, officers, agents and employees or jointly against MRPO and King County and their respective officials, officers, agents and employees, King County shall satisfy the same.

12.2 MRPO shall indemnify and hold King County and its elected officials, officers, agents and employees, or any of them, harmless from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, including attorneys' fees and costs, (i) arising from MRPO's failure to comply with any provision of 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 MRPO, except to the extent that indemnifying or holding the County harmless would be limited by Section 11 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 MRPO, MRPO 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 MRPO and their respective officers, agents and employees, MRPO shall satisfy the same.

12.3 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.

12.4 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.

12.5 The County shall defend any claim against MRPO or the County that it was unlawful for the County to transfer the Pool to MRPO pursuant to this Agreement. This defense obligation shall not be construed as a promise to indemnify MRPO from and against any damages or costs, nor as an obligation to defend any other claims including, but not limited to, those alleging that MRPO unlawfully discontinued operations, closed or mothballed the Pool.

12.6 MRPO shall at all times maintain commercial general liability insurance coverage of not less than $1 million per occurrence and $3 million in the aggregate. The insurance shall name King County (including its officers and employees) as an additional insured. MRPO shall provide evidence of compliance with this provision at the time it executes this Agreement and annually thereafter.

13 AUDITS AND INSPECTIONS

13.1 The County shall have full access to and the right to examine and copy, at its expense, during normal business hours and as often as they deem necessary, all of MRPO's records with respect to all matters covered by this Agreement.

13.2 MRPO shall have access to and the right to examine and copy at its expense, during normal business hours, any disclosable and non-privileged records retained by the County with respect to the construction, maintenance, use, repair, and/or operation of the Pool.

14 COMPLIANCE WITH LAWS

MRPO shall comply, and shall ensure that its contractors comply, with all federal, state and local laws, regulations, and ordinances applicable to the Property and/or its obligations under this Agreement.

15. LEGAL RELATIONS

15.1 This Agreement is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture, agent-principal relationship, or partnership is formed as a result of this Agreement.

15.2 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.

16 WAIVER

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.

17. ENTIRE AGREEMENT AND MODIFICATIONS

This Agreement and its Exhibits sets forth the entire agreement between the parties with respect to the subject matter hereof. It may only 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 contract as though fully set forth herein.

18. MISCELLANEOUS

18.1 MRPO represents and warrants that the execution of this Agreement has been duly authorized and that to the best of MRPO's knowledge there is no pending, lawsuit or material claim against or related to MRPO that will impede or materially affect MRPO's ability to perform the terms of this Agreement, this Agreement does not conflict with the terms of any other agreement to which MRPO is a party, and there is no pending investigation of MRPO by any governmental agency.

18.2 The County represents and warrants that the execution of this Agreement has been duly authorized and that to the best of the County's knowledge there is no pending, lawsuit or material claim against or related to the County that will impede or materially affect the County's ability to perform the terms of this Agreement, this Agreement does not conflict with the terms of any other agreement to which the County is a party.

18.3 This Agreement shall be effective upon its execution 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.

19. NOTICES

19.1 Any notice provided for herein shall be sent to the respective parties at:

King County:
______, Acting Manager
King County Parks and Recreation Division

Dept. of Natural Resources and Parks
King Street Center, 7th Floor
201 S. Jackson St.
Seattle, WA 98104

MRPO:
CEO

IN WITNESS WHEREOF, the parties have executed this Agreement.

King County	MRPO
__________________________	__________________________
King County Executive	CEO
Manager__________________________	__________________________
Date	Date

[INSERT NOTARY SIGNATURE BLOCKS]

EXHIBIT A

List of Underlying Real Property Lease to be assigned to MRPO Prior to any transfer of Property

EXHIBIT B
Legal Description of Mt. Rainier Pool Property

INTERLOCAL AGREEMENT for MOUNT RAINIER POOL
For Years 2004 through 2006
By
MOUNT RAINIER POOL CONTRIBUTORS ("MRPC")
And
MOUNT RAIINIER POOL OWNERS ("MRPO')

In Accordance with the Interlocal Cooperation Act (RCW 39.34), the City of Des Moines ("Des Moines"), the City of Normandy Park ("Normandy Park"), the City of SeaTac ("SeaTac"), and the Highline School District No. 401 ("the District") [Collectively referred to hereafter as the "Parties"], each of which is a Washington Municipal Corporation, hereby enter into the following AGREEMENT:

RECITALS

WHEREAS:

A. King County ("the County"), as part of its duty to serve the needs of the residents of King County and the municipalities within it, from 1974 through 2002, owned, operated and maintained the Mount Rainier Swimming Pool ("the Pool") located on property leased to the County by the District;

B. In 2002, the County reported that it did not have a sufficient, stable source of revenue to continue to manage, maintain and operate the Pool and related programs beyond the 2002 calendar year;

C. On (date), 2002, as part of a joint effort to assure the continued operation of the Pool through the 2003 calendar year, the Parties entered into an "Interlocal Agreement for Mount Rainier Pool Subsidy Funding." Said agreement created the coalition of "Mt. Rainier Pool Contributors" ("MRPC"), consisting of all of the Parties.

D. MRPC then contracted with the County to continue operation of the Pool through the 2003 calendar year. The County has now reported that it will not continue operating the Pool, even with subsidy funding, beyond the 2003 calendar year.

E. The County has agreed to transfer pool ownership and to assign its lease with the District to an ownership coalition consisting of the cities of Des Moines, Normandy Park and SeaTac [to be known as the "Mt. Rainier Pool Owners" ("MRPO")] and the District has agreed to such an assignment. The transfer and assignment will be substantially in the form attached hereto as "Exhibit A."

F. Upon execution and finalization of this agreement, MRPO intends to enter into a Pool Operation Agreement with Aquatic Management Group ("AMG"), substantially in the form attached hereto as "Exhibit B."

ATTACHMENT B

G. This Agreement is now entered into by the Parties as a means of assuring the continued operation of the Pool in 2004 and beyond for the benefit of the citizens of each of the municipalities, while the Parties continue to look for ways to either sustain long-term operation of the Pool or a viable replacement facility.

NOW, THEREFORE, the Parties agree to cooperate with each other by continuing the coalition of **MOUNT RAINIER POOL CONTRIBUTORS ("MRPC")** and by creating a coalition of **MOUNT RAINIER POOL OWNERS ("MRPO")** to carry out the above purposes on the following terms and conditions:

I. TERM of AGREEMENT and RENEWAL

1.1 It is the intention that this Agreement shall be valid for the term of the Pool Operation Agreement with AMG.

1.2 This Agreement shall commence on January 1, 2004 and shall terminate as of December 31, 2006; provided, however, that if the Pool Operation Agreement with AMG is not fully executed and effective as of January 1, 2004, this Agreement shall automatically terminate and be of no further force or effect.

1.3 This Agreement may be renewed only by written agreement of all of the Parties.

II. CONTINUATION OF MOUNT RAINIER POOL CONTRIBUTORS ("MRPC")

2.1 The coalition of **MOUNT RAINIER POOL CONTRIBUTORS ("MRPC")**, created by the Interlocal Agreement in 2002, is hereby continued to carry out the purposes set forth in this Agreement.

2.2 The initial members of MRPC will continue to be members of the continuing MRPC coalition.

2.3 The MRPC members will contribute funds to be used to continue the operation, management and maintenance of the Pool as more fully described herein and in the Pool Operation Agreement with AMG.

2.4 MRPC shall not be considered an owner or operator of the Pool.

III. CREATION OF MOUNT RAINIER POOL OWNERS ("MRPO")

3.1 The coalition of **MOUNT RAINIER POOL OWNERS ("MRPO")**, consisting of the cities of Des Moines, Normandy Park and SeaTac, is hereby created and shall be considered owner of the Pool for the term of this Agreement.

3.2 It is intended that AMG, or a qualified successor approved by MRPO, will be the sole operator of the Pool for the term of the Agreement.

IV. MRPC ELIGIBILITY

4.1 Any public agency seeking to participate in this Agreement may be allowed to do so upon approval of the MRPC Executive Committee (as defined below) pursuant to the existing terms hereof and upon such other terms, including payment of such financial contributions, as may be approved and directed by the MRPC Executive Committee.

4.2 The MRPC Executive Committee, by unanimous vote, may allow admission by a public agency on terms other than those set forth herein for participation. Any public agency so admitted shall be deemed an ex officio party hereto and shall not be entitled to a vote on matters submitted to the MRPC Executive Committee.

V. MRPC EXECUTIVE COMMITTEE

5.1 The MRPC shall be governed by the "MRPC Executive Committee", which is hereby established to assure the effective implementation and administration of this Agreement.

5.2 The MRPC Executive Committee shall be composed of the chief executive officer or designee of each of the Parties.

5.3 Each MRPC member shall also designate an alternate voting member of the MRPC Executive Committee who shall serve in the absence of the voting member.

5.4 The MRPC Executive Committee shall, by majority vote, except as herein otherwise provided, develop and implement policy in order to carry out the goals set forth herein, adopt and administer a budget, receive funding from the Parties for such budget, and seek such outside professional assistance as is necessary to achieve the purposes set forth herein. The funds of MRPC shall be subject to audit in the manner provided by the law for the auditing of public funds.

5.5 Regular meetings of the MRPC Executive Committee shall be held as determined by the MRPC Executive Committee. The MRPC Executive Committee shall elect, by majority vote, a "chair" to conduct its meetings. The chair shall not forfeit, by virtue of the position of chair, any power vested in him/her and in addition will schedule and preside over meetings. The chair shall continue to preside at the pleasure of a majority of the voting members of the MRPC Executive Committee, and may be replaced at any time.

5.6 A quorum for the conduct of business by the MRPC Executive Committee shall be a majority. Notice of any special meeting shall be circulated to all members of the MRPC Executive Committee by the chair, or upon the written notice of a voting majority of the MRPC Executive Committee, not less than twenty-four (24) hours before such meeting is scheduled. No action will be taken without a quorum and without an absolute majority of the eligible voting members of the MRPC Executive Committee voting in favor of the matter under consideration. MRPC Executive Committee members may attend meetings and vote telephonically as may be necessary for the orderly and timely conduct of business.

5.7 On or before August 15, of each year of the agreement the MRPC Executive Committee shall:

- ξ Analyze all significant and relevant information and resources relating to the expenditures and revenues associated with the operation and capital maintenance of the Pool;
- ξ Report its findings to the MRPC members; and
- ξ Recommend a course of action to the MRPC members for the continuing operation and maintenance of the Pool and/or alternative funding sources for the succeeding years.

VI. FUNDING and CONTRIBUTIONS

6.1 The MRPC Executive Committee shall develop a system of proportional funding among the MRPC members that will divide the costs of the pool subsidy contribution equitably among the members.

6.2 The estimated budget and approximate financial subsidy contribution required for the 2004 calendar year, based on best known figures provided by the County for operation of the Pool are as follows:

Estimated Expenses:	
Pool Operations	$ 403,233
Estimated Revenue:	
Pool Operations	($ 305,869)
Pool Capital	$50,000
Total Estimated Subsidy:	<u>$97,000</u>
MRPC Start-up Contribution	$50,000
Total Est. 2004 Subsidy (with MRPC Start-up Contribution):	<u>$147,000</u>

6.3 Funding to subsidize the Pool operation and carry out the purposes of this Agreement for the 2004 calendar year shall be provided by contributions from the MRPC members and by such other contributions as may be received by the MRPC and fund raising activities as may be approved by the MRPC Executive Committee.

6.4 Based on the estimated first year subsidy of $147,000, the financial contribution required and to be paid hy each of the Parties for the 2004 calendar year is:

Des Moines	$ 75,000
Highline School District	$ 20,000
Normandy Park	$ 15,000
SeaTac	$ 25,000
Total Contribution	$ 135,000
Deferred to 2005	$ 15,000
Total 2004 Contribution	$ 147,000

6.5 Based on the estimated second year subsidyof $97,000, and the 2004 payment deferred to January 1, 2005 of $15,000, the financial contribution required and to be paid by each of the Parties for the 2005 calendar year is:

Des Moines		$ 75,000
Highline School District		$ 20,000
Normandy Park		$ 15,000
SeaTac		$ 25,000
Paid to 2004	$ 15,000	
Total 2005 Contribution		$ 120,000
Projected Transfer to Capital Account		$ 23,000

6.6 Based on the estimated third year subsidy of $97,000, the financial contribution required and to be paid by each of the Parties for the 2006 calendar year is:

Des Moines	$ 75,000
Highline School District	$ 20,000
Normandy Park	$ 15,000
SeaTac	$ 25,000
Total Contribution	$ 135,000
Projected Transfer to Capital Account	$ 38,000

6.7 Capital Expenditure Account. MRPO shall establish a Mt. Rainier Pool Escrow Account in the amount of Fifty Thousand ($50,000.00) Dollars with funds transferred from King County. The funds from the escrow account shall be used for capital expenditures for the Pool. The expenditure of County funds for capital items must qualify for the use of REET funds and projects must be of an amount of $5,000 or greater. MRPO may at any time, at its sole discretion and expense, make any and all improvements to or repairs, maintenance and/or modifications of the premises, or any of the areas assigned to AMG in the Operating Agreement, which it deems necessary or desirable to protect or serve pool visitors, or which enhance the pool, however MRPO shall not be obligated to make any improvement or modifications of the premises.

6.8 Any and all unexpended funds remaining as a result of reduced subsidy required by AMG as identified in 6.4 (no funds projected for transfer in 2004), 6.5 ($23,000 funds projected for transfer in 2005), and 6.6 ($38,000 funds projected for transfer in 2006) shall be transferred to the Capital Expenditure Account to be used by MRPO for Capital Pool needs exceeding $2,000 through the term of the Agreement.

VII. ACCOUNTING, PAYMENTS & DISTRIBUTIONS; DESIGNATION OF AUTHORITY

7.1 The MRPC Fund will be established and managed by Des Moines.

7.2 Des Moines will transmit billings for the annual financial contributions to the MRPC members no later than December 15, 2003. Within 15 days after receipt of the billing, MRPC members shall pay the amount billed to Des Moines at 21630 11th Avenue South, Des Moines WA 98198, Attn: Finance Director, or at such other address as may be directed by Des Moines.

7.3 Des Moines shall thereafter, on behalf of the MRPC, transmit the funds to AMG in accordance with the Pool Operation Agreement.

7.4 Any funds provided to the MRPC by other public agencies or by private or non-profit fundraising, in excess of budgeted funding required to operate and maintain the Pool throughout the term of this Agreement, shall be redistributed to the MRPC members to reduce member financial contributions proportionately.

7.5 On February 15 of each contract year, the city of Des Moines will prepare an annual reconciliation of the MRPC Fund actual net operating costs. Upon termination of the Agreement, the City of Des Moines will distribute to each MRPC member their proportional share of any funds remaining in the MRPC Fund.

VIII. MRPO EXECUTIVE COMMITTEE

8.1 The MRPO shall be governed by the "MRPO Executive Committee", which is hereby established to assure the effective implementation and administration of this Agreement.

8.2 The MRPO Executive Committee shall be composed of the chief executive officer or designee of each of the member cities of MRPO.

8.3 Each MRPO member city shall also designate an alternate voting member of the MRPO Executive Committee who shall serve in the absence of the voting member.

8.4 The MRPO Executive Committee shall, by majority vote, except as herein otherwise provided, develop and implement policy in order to carry out the goals set forth herein, adopt and administer a budget, receive funding from the Parties for such budget, and seek such outside professional assistance as is necessary to achieve the purposes set forth herein. The funds of

MRPO shall be subject to audit in the manner provided by the law for the auditing of public funds.

8.5 Regular meetings of the MRPO Executive Committee shall be held as determined by the MRPO Executive Committee. The MRPO Executive Committee shall elect, by majority vote, a "chair" to conduct its meetings. The chair shall not forfeit, by virtue of the position of chair, any power vested in him/her and in addition will schedule and preside over meetings. The chair shall continue to preside at the pleasure of a majority of the voting members of the MRPO Executive Committee, and may be replaced at any time.

8.6 A quorum for the conduct of business by the MRPO Executive Committee shall be a majority. Notice of any special meeting shall be circulated to all members of the MRPO Executive Committee by the chair, or upon the written notice of a voting majority of the MRPO Executive Committee, not less than twenty-four (24) hours before such meeting is scheduled. No action will be taken without a quorum and without an absolute majority of the eligible voting members of the MRPO Executive Committee voting in favor of the matter under consideration. MRPO Executive Committee members may attend meetings and vote telephonically as may be necessary for the orderly and timely conduct of business.

8.7 On or before August 15, of each year the MRPO Executive Committee shall:

ξ Analyze all significant and relevant information and resources relating to the expenditures and revenues associated with the operation and capital maintenance of the Pool;

ξ Report its findings to the MRPO members; and

ξ Recommend a course of action to the MRPO members for the continuing operation and maintenance of the Pool and/or alternative funding sources for the succeeding years.

IX. MISCELLANEOUS PROVISIONS

9.1 Effective Date. This Agreement shall be effective upon ratification by resolution of the governing body and execution by the Chief Executive Officer of each of the Parties.

9.2 Amendment. This Agreement may be amended only upon consent of all Parties hereto. Any amendment hereto shall be in writing and shall be ratified and executed by the Parties in the same manner in which it was originally adopted.

9.3 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.

9.4 Grants, Gifts, Etc. All Parties to this Agreement shall cooperate and assist each other in procuring scholarships, grants or financial assistance from the United States, the State of Washington, and private benefactors for the reduction of MRPC subsidy payments made to the TBD for its continued operation, management and maintenance of the Pool and programs.

9.5 Severability. If any provision of this Agreement shall be held invalid, the remainder shall not be affected thereby.

9.6 Entire Agreement. This Agreement represents the entire understanding of the Parties and supersedes any oral representations that are inconsistent with or modify its terms and conditions.

9.7 Counterparts. This Agreement shall be effective whether signed by all Parties on the same document or whether signed in counterparts.

9.8 Notices. Except as otherwise provided in this Agreement, any notice required to be provided under the terms of this Agreement shall be delivered by certified mail, return receipt requested, or by personal service.

EXECUTED and APPROVED by the Parties in identical counterparts of this Agreement, each of which shall be deemed an original hereof, on the dates set forth below.

APPROVED AS TO FORM this__________ day of ______________, 2003.

By______________________________
Richard S. Brown
Assistant City Attorney of Des Moines

DATED this ______________ day of _________________________, 2003.

CITY 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__________, 2003.

APPROVED AS TO FORM this__________ day of ______________, 2003.

By______________________________

Susan Sampson
City Attorney of Normandy Park

DATED this ______________ day of _________________________, 2003.

CITY 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 ________________, 2003.

APPROVED AS TO FORM this__________ day of______________, 2003.

By____________________________
Robert L. McAdams
City Attorney of SeaTac

DATED this ______________ day of ________________________, 2003.

CITY 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 ____________, 2003.

APPROVED AS TO FORM this__________ day of ______________, 2003.

By____________________________
William Green
Attorney for Highline School District

DATED this ______________ day of ________________________, 2003.

HIGHLINE SCHOOL DISTRICT No. 401

By____________________________
Dr. Joseph McGeehan
Its Superintendent
At the direction of the Highline School Board by resolution regularly passed at an open public meeting on ___________, 2003.

EXHIBIT A

[Insert Mt. Rainier Pool Transfer Agreement]

EXHIBIT B

[Insert AMG Mt. Rainier Pool Operation Agreement]

AGREEMENT
between
AQUATIC MANAGEMENT GROUP, INC. ("AMG")
and
MOUNT RAINIER POOL OWNERS ("MRPO")
regarding
THE OPERATION OF THE MT. RAINIER POOL

1. PARTIES

This **Agreement** (hereinafter "AGREEMENT") is entered into between **Aquatic Management Group, Inc.**, a Washington Corporation (hereinafter **"AMG"**), and the **Mount Rainier Pool Owners**, a coalition of the municipalities of Seatac, Normandy Park and Des Moines, (hereinafter **"MRPO"**).

2. PURPOSE AND RECITALS

2.1 The Mt. Rainier Pool was built as part of the 1967 Forward Thrust initiative.

2.2 Since its construction, King County ("The County") has operated and maintained the Mt. Rainier Pool, pursuant to a lease agreement signed in 1974 with the Highline School District (hereinafter "HIGHLINE"), on HIGHLINE property.

2.3 The County's current budget crisis necessitates that it discontinue the operation and maintenance of the Mt. Rainier Pool as of December 31, 2003 and, if possible, transfer the ownership of the pool to another entity;

2.4 The Cities of Des Moines, Normandy Park and SeaTac have, through an Interlocal Agreement, created a coalition of cities known as "Mount Rainier Pool Owners" ("MRPO") for the purposes of owning and operating the Mount Rainier Pool, and said cities have notified the County that it wishes the County to transfer the ownership of the Mt. Rainier Pool to MRPO.

2.5 The above cities have further stated their willingness, together with the Highline School District and other contributors, to provide ongoing funding to MRPO to support the operation of the Mt. Rainier Pool for so long as such operation remains economically viable for MRPO or until there is a viable replacement for the Mt. Rainier Pool.

2.6 Assuming that adequate financial support is available from Highline, MRPO and/or other community resources to operate the Pool, AMG has expressed an interest in operating and maintaining the Pool.

It is, therefore **AGREED** as follows:

ATTACHMENT C

3. AMG RESPONSIBILITIES

3.1 Maintenance & Operation of Mt. Rainier Pool. AMG shall maintain, and operate the Mt. Rainier Pool, located on HIGHLINE property at 22722 - 19th Avenue S., Des Moines, Washington for a period of three (3) years, beginning January 1, 2004 through December 31, 2006.

3.1.1 Routine Pool Maintenance and Repairs. AMG will provide routine and preventative maintenance and repair, up to an annual cost of $15,000 and a capital expenditure outlay or major repair of up to $2,000 per occurrence, of those items identified on the "Pool Operator's Maintenance Responsibilities," which is attached hereto as "Exhibit B" and incorporated herein by this reference.

3.1.2 Use and Storage of Chemicals. Any cleaners, fungicides, insecticides and other chemicals used by AMG in the operation and maintenance of the Pool shall be used in a safe manner in compliance with label instructions and all applicable codes, rules and regulations concerning said substances. AMG shall store and dispose of all such chemicals in a safe and secure manner in compliance with label instructions and all applicable codes and regulations.

3.1.3 Existing Equipment and Supplies. MRPO will leave on site certain pool equipment and supplies transferred from King County to MRPO for the operation and maintenance of the Pool, as described in "Exhibit A," which is attached hereto and incorporate herein by this reference. Equipment and supplies include furniture, lifeguard equipment, first aid supplies, specialty tools, operator manuals, computer equipment used for pool operation, phone system, lighting fixtures, miscellaneous pool equipment, building maintenance supplies, spare parts, and materials such as chlorine and filtration supplies for pool maintenance. AMG may use all equipment and supplies and through this use also agrees that MRPO holds no future responsibility with regard to the equipment and supplies or any occurrence related to or resulting from use of the equipment and supplies. All equipment and supplies acquired or purchased with MRPO funds under this agreement shall remain at the Pool and become the property of MRPO at the termination of this agreement.

3.2 Conditions for Operation and Management. In order to successfully manage the Mt. Rainier Pool and to minimize the required subsidy, the following actions and/or conditions shall be required:

3.2.1 Pool Usage. In operating the pool, AMG shall provide programs and hours of operation reasonably similar to those programs and hours of operation currently provided by King County to current users of the Mt. Rainier Pool.

3.2.2 Advertising Program. AMG shall provide quarterly promotional materials to the Owners for local communications to the public for each municipality and Highline School District. All signing placed by AMG within the premises shall require the prior written approval of MRPO. AMG shall include a credit line in any promotional or publicity materials reading as follows: Facility operated with support from Cities of Des Moines, Normandy Park and SeaTac and Highline School District.

3.3 Accounting. The following accounting practices shall be observed by AMG:

3.3.1 Monthly Reports. AMG shall provide monthly reports to MRPO regarding the maintenance and operation of the Mt. Rainier Pool, including, but not limited to, fee schedules, pool usage and revenue therefrom, administration and customer service costs, staffing costs, pool maintenance budget for chemicals, pool supplies and minor repairs, utility and sanitation costs, and 6% administrative overhead. In addition, AMG shall maintain complete maintenance and staffing records as follows:

a) A daily pool staffing log will be kept documenting certified pool personnel on the premises during operational hours;
b) A daily maintenance log will be kept documenting all work done on the premises;
c) A daily record of all equipment used on the premises; and
d) A daily record of all chemicals and pool supplies used in the operation of the premises and their frequency of use.

3.3.2 Independent Accounting. The Mt. Rainier Pool shall be operated as a separate entity by AMG and all accounting and reports regarding the Mt. Rainier Pool shall be independent and separate from AMG's own accounting and from any other activities in which AMG may be involved. A true accounting of all receipts and disbursements shall be maintained by AMG and shall be made available for review and audit by MRPC at the discretion of MRPC. Records of gross sales and receipts are to be kept for each revenue source by AMG.

3.4 Capital Improvements.

3.4.1 AMG shall work with MRPC to make any capital improvements to the Mt. Rainier Pool that are necessary and reasonable to allow it to fulfill its commitment to operate the pool; provided, however, that AMG shall have no obligation to make any capital improvements or repairs that are necessitated by an act of nature or other event beyond the control of AMG.

3.4.2 A Capital Improvement threshold of $5,000 shall be established before use of MPRO's Capital Improvement Fund dollars. Repair items of $2,000 Dollars or more and/or over AMG's annual maintenance allocation of $15,000 Dollars must be submitted to MPRO for review and approval of fund allocation. Capital Items are identified on the "Owners Capital Improvement Responsibilities," attached hereto as "Exhibit C", and incorporated herein by this reference.

3.5 Personnel. AMG shall maintain an adequate number of qualified personnel to meet operational, maintenance and service requirements of this Agreement. AMG and its personnel shall operate in a business-like and courteous manner, and strive to provide high quality and personable services to the public. At no time shall AMG relinquish control of the pool operations to a third party without the written consent of MRPO.

3.5.1 Independent Contractor. AMG and its employees or agents performing under this Operating Agreement are not employees or agents of MRPO. AMG and its employees shall not hold themselves out as nor claim to be officers or employees of MRPO or any of the member cities by reason hereof, nor will they make any claim of right, privilege or benefit which would accrue to a municipal employee under state law.

3.5.2 Closures AMG shall waive any claim against MRPO from losses sustained or allegedly sustained due to any closure of the premises by MRPO that may result from necessary improvements or repairs, failure of any utility systems, forces of nature, protection of public safety, or for any other reason.

3.6 Funding Contingency. MRPO acknowledges and agrees that if and other Mount Rainier Pool contributors fail to provide the funding support set forth in Section 4 below, and AMG is unable to find an alternate source of operating support, AMG may ultimately close the Pool, and terminate this Agreement.

4. RESPONSIBILITIES OF MRPO

In consideration of AMG operating and maintaining the Mt. Rainier Pool at the levels of service specified herein, MRPO, on behalf of all contributors to the Mount Rainier Pool, shall pay AMG as follows:

4.1 Start Up Funds. Start up funds of Fifty Thousand ($50,000.00) Dollars, due on or before January 1, 2004;

4.2 Annual Pool Operations Funds. An annual payment, based on actual Net Operating Costs (Mt. Rainier Pool operations and maintenance costs and 6% management fee less all Mt. Rainier Pool revenues generated by pool operations) to be paid in six (6) equal bi-monthly payments payable on the first day of each January, March, May, July, September and November during the term of this agreement.

4.2.1 AMG's Net Operating Cost per year shall not exceed the estimated amount of $97,000.00;

4.2.2 Each bi-monthly payment for the first year of operations shall be $16,166.67;

4.2.3 In the event that AMG is successful in reducing its actual Net Operating Costs over the term of this agreement, AMG will reconcile the difference and refund any over-payment of funds to MRPO within 60 days of each year-end accounting cycle.

4.2.4 If MRPO has not made any of the bi-monthly payments within 10 days after its due date, AMG shall send by registered mail and fax to the contact person for MRPO a written notice that such payment is overdue, and if payment is not made within 5 business days after said notice, AMG may terminate this Agreement by written notice.

4.3 <u>Capital Expenditure Account</u>. MRPO shall establish a Mt. Rainier Pool Escrow Account in the amount of Fifty Thousand ($50,000.00) Dollars. The funds from the escrow account shall be used for capital expenditures for the Mt. Rainier Pool. All capital items must qualify for the use of REET funds and projects must be of an amount of $5,000 or greater. MRPO may, at any time and at its sole discretion and expense, make any and all improvements to or repairs, maintenance and/or modifications of the premises, or any of the areas assigned to AMG in the Operating Agreement, which it deems necessary or desirable to protect or serve pool visitors, or which enhance the pool, however MRPO shall not be obligated to make any improvement or modifications of the premises.

4.4 <u>Lack of Funding Contingency</u>. In the event that MRPO determines at any time that the costs to operate the Pool exceed its reasonably available funds, MRPO shall provide 90 days notice to AMG and the MRPO communities and make every reasonable and diligent effort to secure financial support for continued operation. If adequate funding is not secured in the ninety (90) day period, MRPO shall certify to the Highline School District and King County in writing that: (1) it has used all reasonable and diligent efforts to continue to operate the Pool and to secure financial support therefor; (2) funds are not reasonably available to allow the continued operation of the Pool by MRPO; and (3) MRPO has been unable to assign its interests in the Pool to another operator or otherwise ensure the continued operation of the Pool as a public pool. Thereafter, MRPO may elect, consistent with applicable legal requirements, to have title to the Pool revert to King County in accordance with the Assignment of Lease. MRPO is solely responsible for its actions and determinations under this section.

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5. AMENDMENTS

This AGREEMENT may be amended only upon consent of all of the parties hereto. Any amendment shall be in writing and shall be ratified and executed by the parties in the same manner as set forth in § 7 of this AGREEMENT.

6. DISPUTE RESOLUTION

6.1 If a dispute arises from or relates to this Contract or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under the American Arbitration Association's Rules before resorting to arbitration. The mediator may be selected by agreement of the parties or through the American Arbitration Association.

6.2 Following mediation, any unresolved controversy or claim arising from or relating to this Contract or breach thereof shall be settled through arbitration which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association.

6.3 All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

7. EFFECTIVE DATE, DURATION AND TERMINATION

7.1 This AGREEMENT shall become effective as of January 1, 2004 provided it is approved as follows:

7.1.1 Approval by the official action of the governing body and the signing of the agreement by the duly authorized representative of AMG;

7.1.2 Approval by the official action of the MRPO Executive Committee and signing of the agreement by the duly authorized representative of MRPO; and

7.1.3 Approval by the official action of the governing bodies and signing of the agreement by the duly authorized representative of each of the member municipalities of MRPO.

7.2 On or before September 1, 2006, the parties shall meet to consider an extension to this agreement. If no extension agreement is reached this agreement shall terminate on December 31, 2006.

7.3 This AGREEMENT may be terminated at any time by mutual agreement of the parties.

8. INDEMNIFICATION AND LIABILITY

8.1 AMG shall protect, save harmless, indemnify, and defend, at its own expense, MRPO and its respective municipalities, their elected and appointed officials, officers, employees and agents, from any loss or claim for damages of any nature whatsoever brought by any third party, but only to the extent such loss or claim results from AMG's failure to comply with any duty or obligation undertaken by it under this Agreement, or any negligence or willful misconduct of AMG in carrying out its duties and obligations under this Agreement including claims by AMG's employees or third parties.

8.2 MRPO and its respective municipalities shall protect, save harmless, indemnify, and defend, at its own expense, AMG, its elected and appointed officials, officers, employees and agents, from any loss or claim for damages of any nature whatsoever brought by any third party, but only to the extent such loss or claim results from MRPO's failure to comply with any duty or obligation undertaken by it under this Agreement, or any negligence or willful misconduct of MRPO in carrying out its duties and obligations under this Agreement including claims by MRPO's employees or third parties.

8.3 In the event of any party's liability for damages of any nature whatsoever arising out of the performance of this AGREEMENT by any party, including claims by any party's own officers, officials, employees, agents, or volunteers, or claims by third parties, caused by or resulting from the concurrent negligence of two or more parties, their officers, officials, employees or volunteers, each party's liability hereunder shall be limited to the extent of that party's negligence.

8.4 AMG reserves the right to require pool liability and indemnity agreements and use agreements from users similar to those that King County required of users previous to the transfer of the asset to MRPO.

8.5 Each party's indemnification provided herein constitutes each party's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section 8 shall survive the expiration or termination of this Agreement.

9. INSURANCE

9.1 During the term of this agreement and any extensions, AMG shall maintain general commercial liability insurance coverage of not less than $1 million per occurrence and $5 million in the aggregate.

9.2 AMG's insurance coverage shall be primary insurance as respect the parties. Any insurance, self-insurance, or insurance pool coverage maintained by the parties shall be excess of AMG's insurance and shall not contribute with it.

9.3 AMG's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been give to MRPO.

9.4 AMG shall furnish MRPO with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of AMG.

10. SEVERABILITY

Should a court of competent jurisdiction declare any clause, phrase, sentence or paragraph of this AGREEMENT invalid or void, the remaining provisions of this AGREEMENT not so declared shall remain in full force and effect.

11. EXERCISE OF RIGHTS OR REMEDIES

Failure of any party to exercise any rights or remedies under this AGREEMENT shall not be a waiver of any obligation by either party and shall not prevent either party from pursuing that right at any future time.

12. RECORDS

The parties shall maintain adequate records to document obligations performed under this AGREEMENT. The parties shall have the right to review every other party's records with regard to the subject matter of this AGREEMENT, upon reasonable notice.

13. ENTIRE AGREEMENT

This AGREEMENT constitutes the entire AGREEMENT between the parties with respect to the maintenance and operation of the Mt. Rainier Pool.

14. GOVERNING LAW AND STIPULATION OF VENUE

This AGREEMENT shall be governed by the laws of the State of Washington. Any action hereunder must be brought in the Superior Court of Washington for King County.

15. CONTACTS FOR AGREEMENT. The contact persons for this AGREEMENT are:

AMG	MRPO
(Name)	Patrice Thorell
Chief Executive Officer	Parks & Recreation Director
(Address)	City of Des Moines
	21630 11th Ave. S.
	Des Moines WA 98198
(Telephone)	(206) 870-6529

EXECUTED and APPROVED by the Parties in identical counterparts, each of which shall be deemed an original, on the dates set forth below.

DATED this _____ day of   DATED this _______ day of

________________, 2003

MOUNT RAINIER POOL OWNERS

____

(NAME)
CHIEF EXECUTIVE OFFICER

APPROVED AS TO FORM this__________ day of ______________, 2003.

By__________________________________
Richard S. Brown
Assistant City Attorney of Des Moines

__________________, 2003

AQUATIC MANAGEMENT GROUP, INC.

____

(NAME)
CHIEF EXECUTIVE OFFICER

DATED this ______ day of __________________, 2003.

CITY 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___________, 2003.

APPROVED AS TO FORM this__________ day of ______________, 2003.

By__________________________________
Susan Sampson
City Attorney of Normandy Park

DATED this ______ day of __________________, 2003.

CITY 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 ____________, 2003.

APPROVED AS TO FORM this__________ day of______________, 2003.

By__________________________________
Robert L. McAdams
City Attorney of SeaTac

DATED this ______ day of __________________, 2003.

CITY 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 ____________, 2003.

EXHIBIT A
Personal Property to be transferred with Pool
EXHIBIT B
Pool Operator's Maintenance Responsibilities
EXHIBIT C
Owners Capital Improvement Responsibilities