

INTERLOCAL AGREEMENT  
Between  
Edmonds School District #15  
and  
City of Lynnwood  
for  
Use of City Aquatic Facilities

This Interlocal Agreement is made by and between the Edmonds School District #15 (the "District") and the City of Lynnwood (the "City"), both municipal corporations under the laws of the State of Washington (collectively, the "Parties").

WHEREAS, the Interlocal Cooperation Act, as amended and codified in Chapter 39.34RCW provides for interlocal cooperation between government agencies, and;

WHEREAS, the District desires to use City aquatic facilities for conducting interscholastic swimming and aquatic sports programs. The City agrees to have the District use the City's Aquatic Facilities in return for payment of rent, and;

WHEREAS, this Agreement maximizes public benefit by implementing an agreement for the use of City-owned facilities, and;

WHEREAS, both the City and the District will benefit from using an agreement which defines and protects the interests of both parties.

NOW THEREFORE, IN CONSIDERATION of the benefits to be derived and the terms and conditions set forth herein the City of Lynnwood and the Edmonds School District No. 15 do hereby agree as follows:

1. Use of Aquatic Facilities. The City agrees to make its Aquatic Facilities available to the District and the District agrees to rent the Aquatic Facilities from the City on the following terms and conditions. "Aquatic Facilities" include, but are not limited to, the swimming pool, locker rooms, showers and related equipment owned by the City of Lynnwood and located at 18900 44<sup>th</sup> Avenue West in Lynnwood.

2. Term of Agreement. The term of this agreement shall be January 1, 2009 through April 30, 2009, unless either party terminates the agreement pursuant to Paragraph 12 herein. The parties shall have the option to review this Agreement in a meeting in March 2009, and to extend the term of the Agreement for one additional year. At least 120 days prior to the time for potential termination provided in Paragraph 12 of this Agreement, the parties shall initiate discussion to assess whether any modifications to this Agreement are needed.

3. Hours of Use. The specific hours of use of the Aquatic Facilities have been determined and agreed upon by the City's Aquatic Supervisor and the District. The Hourly School Program Schedule may be adjusted only upon written notice to the Aquatic Supervisor.

1 The District may, upon reasonable notice, request permission for use of the Aquatic Facilities for  
2 additional hours, and the City shall grant such permission based on the availability of the Aquatic  
3 Facilities.  
4

5 4. Rent. The District shall pay the City \$35.00 per hour for use of the Aquatic  
6 Facilities for the term of this Agreement. The District shall pay the City an additional fee for  
7 rental and use of City classroom facilities at the Recreation Center, at a rate of \$20.00 per hour.  
8 The rental rates for subsequent years shall be determined in March before the following school  
9 year.  
10

11 5. City Responsibilities. The City shall:  
12

13 A. Provide a minimum of two lifeguards for all hours the Aquatic Facility is  
14 used by the District. The role of the City lifeguards shall be to support District personnel's  
15 enforcement of Aquatic Facility rules and to respond to emergencies requiring lifesaving  
16 assistance.

17 B. Ensure that aquatics program personnel have current required certification  
18 (i.e. lifeguard training, CPR, current first aid certification) to ensure the safety and well being of  
19 its patrons.

20 C. Be responsible for the safety of its personnel, patrons and spectators while  
21 they are using the Aquatic Facility.  
22

23 D. Provide for the operation and maintenance of the Aquatic Facility in  
24 conjunction with its operation, maintenance and repair of the Recreation Center, and to make  
25 necessary repairs.  
26

27 E. Be responsible for purchasing, maintaining, repairing, and replacing  
28 equipment permanently installed in the Aquatics Facility such as lane lines, flags and starting  
29 blocks.  
30

31 F. Provide a copy of the City's Aquatics Facility Rules and Regulations, and  
32 any amendments to the Athletic Director for the use of the District.  
33

34 6. District Responsibilities. The District shall:  
35

36 A. Provide for supervisory personnel for all District aquatic activities. The  
37 District has lead responsibility for the safety of its students, staff, athletes, event volunteers, and  
38 spectators at the events while they are using the Aquatic Facility. For purposes of this  
39 agreement, the term "personnel" means all officers, employees, agents, contractors, volunteers  
40 or any other person acting under the authority of the District.  
41

42 B. Ensure that all District personnel with on-site supervision and/or  
43 responsibility for the various school aquatic programs shall have current lifeguard training  
44 certification, current CPR certification and current first aid certification. District personnel  
45 acting as dive coaches must be certified US Diving Safety Training for Competitive Diving  
46 Coaches, which certification may substitute for lifeguard training. District personnel acting as

1 swim coaches must be certified United States Swimming Safety Training for Swim Coaches,  
2 which certification may substitute for lifeguard training. Such certifications shall be obtained  
3 prior to use of the Aquatic Facility.  
4

5 In the event that coaches are employed by the District just prior to the start of the season, the  
6 City will allow 60 days to obtain certifications, provided that certifications shall be obtained  
7 and provided to the City during the first season of employment with the District, and further  
8 provided that there is at least one coach on site with all required certifications.  
9

10 C. Provide City with copies of all required certifications before use of the  
11 facility, and assume sole responsibility for ensuring compliance with subsection B.  
12

13 D. The District shall assume all responsibility for conduct of all student athletes,  
14 coaches and event staff at District aquatic activities, and interscholastic practices and meets.  
15

16 E. District personnel shall read Aquatic Facility Rules and Regulations and shall  
17 acknowledge the rules and regulations by signing the rules and regulations document provided  
18 by City.  
19

20 F. Inform out-of-District personnel of Aquatic Facility Rules and Regulations  
21 prior to out-of-District use of Facility.  
22

23 G. The District shall inspect the Aquatic Facility prior to all swim activities,  
24 practices and meets to determine the fitness of the Facility for the District activity. District shall  
25 immediately report and inform City of any conditions of concern regarding the fitness of the  
26 Facility and equipment for District's use prior to using Facility. This obligation is independent  
27 of and in addition to the City's responsibilities in paragraphs 5D and 5E of this Agreement.  
28

29 H. The District shall bear all responsibility for the use of the physical facility as  
30 relates to the District activity and shall indemnify and hold the City harmless for such use as set  
31 forth in Paragraph 9 of this Agreement.  
32

33 I. The District agrees to pay for all damages to City-owned property resulting  
34 from the District's activities conducted at the City-owned Aquatic Facility. Further, the District  
35 agrees to return City-owned property to the City in the same or better condition, minus  
36 reasonable wear and tear, at the conclusion of the District's use of the Aquatic Facility.  
37

38  
39 7. Safety Regulations. The District programs shall be conducted in conformance  
40 with all applicable safety and health regulations adopted by the State of Washington as now  
41 enacted or as hereinafter amended and with all City of Lynnwood Aquatic Facility Rules and  
42 Regulations. The District assumes full responsibility for ensuring compliance with this  
43 Paragraph.  
44

45 In the event the City has closed the Aquatic Facility to public use for necessary repairs,  
46 maintenance, or resulting from the District's failure to meet the responsibilities outlined in this

1 agreement, the City has the right to suspend District use of the facility. The City shall promptly  
2 notify the District Athletic Director and seek resolution.  
3

4       8.     Equipment. The District shall provide equipment necessary for District aquatics  
5 programs, except when the City provides equipment for use in the District's programs.  
6 Equipment used exclusively by the District may be stored on City property during the boys and  
7 girls swim team seasons only, with prior verbal agreement by both parties. Designated  
8 representatives of both parties shall meet annually prior to the City's budgeting process to  
9 discuss purchase, repair and replacement of expendable and permanently installed equipment.  
10

11 Expendable equipment owned by the City and used by the District, shall include kickboards,  
12 hand paddles, pull buoys. The City shall budget for and purchase the expendable equipment  
13 listed above, at no additional cost to the District.  
14

15 The City shall be responsible for purchasing, maintaining, repairing, and replacing equipment  
16 permanently installed in the Aquatic Facility such as lane lines, flags and starting blocks. The  
17 City and the District shall together at a meeting in March mutually determine the need for  
18 permanently installed equipment replacement and shall share the costs for expenditures related to  
19 the purchase, replacement and re-installation of such permanently installed equipment. The City  
20 shall keep an annual accounting of all expenditures and repair costs for such equipment and  
21 report such costs to the District. The District shall reimburse the City for the District's share of  
22 all sums expended for purchase, replacement and repair of such equipment. The District's share  
23 shall be mutually determined at the annual meeting, and shall be based on the percentage of  
24 District use of the equipment when compared to the overall public use of the equipment.  
25

26       9.     District Indemnity and Hold Harmless.  
27

28       A.     The District shall protect, defend, and hold harmless the City of  
29 Lynnwood, its officers, officials, employees, and agents, from any and all claims, demands, suits,  
30 penalties, losses, damages, judgments, attorneys' fees and/or costs of any kind whatsoever,  
31 including, but not limited to, claims arising out of or in any way resulting from acts or omissions  
32 of the District, its officers, officials, employees, students, volunteers, agents and/or  
33 subcontractors, in the District's use of facilities owned by the City of Lynnwood that are the  
34 subject of this Agreement.  
35

36       B.     The District's obligations under this section shall include, but are not  
37 limited to:  
38

39             (1)    The duty to promptly accept tender of defense and provide defense  
40 to the City at the District's own expense;  
41

42             (2)    Indemnification for such claims whether or not they arise from the  
43 sole negligence of the District, or the concurrent negligence of the District and the City or  
44 another party. However, the extent of the District's indemnity shall not extend to the sole  
45 negligence of the City.  
46

1 (3) The duty to indemnify and defend the City from any claim,  
2 demand, and/or cause of action brought by or on behalf of any of the District's employees or  
3 agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the  
4 District's immunity under Washington's Industrial Insurance Act, Chapter 51 RCW, as respects  
5 the City of Lynnwood only, and only to the extent necessary to provide the City of Lynnwood  
6 with a full and complete indemnity and defense of claims made by the District's employees.  
7

8 C. In the event that the City of Lynnwood incurs attorney fees and/or costs in  
9 the defense of claims for damages within the scope of this section, such fees and costs shall be  
10 recoverable from the District in accordance with this Agreement. In addition, in the event it  
11 becomes necessary for either party to seek enforcement of this Agreement, the prevailing party  
12 shall be entitled to recover attorneys' fees and costs incurred to enforce this Agreement from the  
13 non-prevailing party.  
14

15 10. District Liability Coverage.  
16

17 A. Nature of Coverage. The District shall maintain commercial general  
18 liability coverage or shall obtain a coverage agreement approved by the City, and attached to this  
19 Agreement, through a Risk Pool authorized by Chapter 39.34 RCW which shall provide liability  
20 coverage to the District and the City for the liabilities arising from this Agreement, and arising  
21 out of the activities pertaining to this Agreement. By requiring such liability coverage, the City  
22 of Lynnwood shall not be deemed to, or construed to, have assessed the risks that may be  
23 applicable to the District in this Agreement. The District shall assess its own risks and, if it  
24 deems appropriate and/or prudent, maintain greater limits or broader coverage than is herein  
25 specified.  
26

27 B. Scope and Limits of Liability Coverage.  
28

29 (1) Commercial General Bodily Injury and Property Damage  
30 Insurance or equivalent coverage through the Risk Pool shall be written with limits of liability of  
31 no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 in aggregate and  
32 shall include coverage for:

- 33 Premises & Operations
- 34 Contractual liability (including specifically liability assumed herein)
- 35 Broad Form Property Damage
- 36 Commercial Form (to include Extended Bodily Injury)
- 37 Independent Contractors
- 38 Personal Injury
- 39 Stop Gap
- 40 Cross liability clause

41 (2) Automobile Bodily Injury and Property Damage Insurance or  
42 equivalent coverage through the Risk Pool shall be written with limits of liability for limits of not  
43 less than \$1,000,000 combined single limit per occurrence and shall include coverage for:

- 44 All owned automobiles
- 45 Non-Owned automobiles
- 46 Hired Automobiles

1 Any automobiles  
2

3 (3) Umbrella Liability Insurance or equivalent coverage through the  
4 Risk Pool shall be written on a following form basis with limits of in no case less than  
5 \$15,000,000.  
6

7 (4) Bodily Injury Liability Insurance or equivalent coverage through  
8 the Risk Pool shall be written on an occurrence basis for bodily injury, sickness or disease,  
9 including death resulting from death.  
10

11 (5) Property Damage Liability Insurance or equivalent coverage  
12 through the Risk Pool shall be written on an occurrence basis for damage to or destruction of  
13 property, including the loss of use thereof.  
14

15 (6) Workers' Compensation coverage as required by the Industrial  
16 Insurance Act of the State of Washington, Title 51 RCW, and statutory limits.  
17

18 C. Deductibles and Self-insured Retentions. Any deductible and/or self-  
19 insured retention shall be the sole responsibility of the District.  
20

21 D. Other Provisions. The coverages required by this Agreement are to  
22 contain or be endorsed to contain the following provisions where applicable.  
23

24 (1) Liability Coverages. The District's liability coverage shall be  
25 primary coverage as respects the City of Lynnwood, its officers, officials, employees, and agents.  
26 In the event of District negligence, any insurance and/or self-insurance maintained by the City of  
27 Lynnwood, its officers, officials, employees and agents shall not contribute with the District's  
28 coverage or benefit the District in any way.  
29

30 (2) All Policies and Coverage Agreements. Coverage shall not be  
31 suspended, voided, canceled, materially reduced in coverage or in limits except by the reduction  
32 of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written  
33 notice, sent by registered mail, has been given to the City of Lynnwood.  
34

35 (3) Acceptability of Insurers. Unless otherwise accepted by the City  
36 of Lynnwood, insurance coverage is to be placed with a Risk Pool authorized by Chapter 39.34  
37 RCW or insurers with a Best's rating of no less than A: VIII, or, if not rated by Best's, with a  
38 minimum surplus the equivalent of Best's surplus size VIII.  
39

40 (4) Verification of Coverage and Additional Named Insured. The  
41 District shall furnish the City with certificates of coverage. The certificates for each policy or  
42 coverage agreement are to be signed by a person authorized to bind coverage. If the District  
43 obtains commercial general liability insurance, the certificates shall include the Additional  
44 Named Insured Endorsement, naming the City of Lynnwood as a Primary additional named  
45 insured. The certificates are to be received and accepted by the City of Lynnwood prior to the  
46 commencement of activities associated with this Agreement. If the District obtains coverage

1 through the Risk Pool, the District agrees to defend and indemnify the City for any and all claims  
2 that are a result of District use of the facility, in the same manner as if the District had purchased  
3 liability insurance with the City as additional named insured.  
4

5 11. Non-waiver. Failure of the City to insist on strict performance of the terms,  
6 agreements and conditions herein contained, or any of them, shall not constitute or be construed  
7 as a waiver or relinquishment of the City's right thereafter to insist on compliance with any such  
8 term, agreement, or condition, but the same shall continue in full force and effect.  
9

10 12. Termination. This Aquatic Facilities Use Agreement may be terminated by the  
11 City or by the District upon written notice to the other party at least one hundred twenty (120)  
12 days in advance of the intended termination date.  
13

14 13. Assignment. Neither party shall assign or sublet its rights or responsibilities  
15 under this Agreement without the written authorization of the other party. Written authorization  
16 shall not be unreasonably withheld.  
17

18 14. Notice. Each notice or communication which may be or is required to be given  
19 under this Agreement shall be in writing and shall be deemed to have been properly given when  
20 delivered personally during the normal business hours to the party to whom such communication  
21 is directed or three working (3) days after being sent by regular mail, to the appropriate one of  
22 the following address as may be designated by the appropriate party:  
23

24 CITY OF LYNNWOOD	EDMONDS SCHOOL DISTRICT
25 Parks, Recreation & Cultural Arts Department	20420 68 <sup>th</sup> Ave. W.
26 19100 44 <sup>th</sup> Ave. W.	Lynnwood, WA 98036-7000
27 Lynnwood, WA 98036	
28 PO BOX 5008	
29 Lynnwood, WA 98046-5008	ATTN: Athletic Director
30 ATTN: Recreation Superintendent	
31	

32 15. Dispute Resolution.  
33 If either party claims that the other party has breached any term of this  
34 Agreement, the following procedures shall be followed if and when informal communications,  
35 such as telephone conversations, fail to satisfy the claiming party, or one of the parties elects to  
36 trigger the dispute resolution process at any time, in the event of disputes or disagreements  
37 concerning programming or uses:  
38

39 A. The claiming party's Designated Representative shall provide a written  
40 notice to the other party's representative of the alleged breach. The notice shall identify the act  
41 or omission at issue and the specific term(s) of the Agreement which the complaining party  
42 alleges was violated.  
43

44 B. The responding party's Designated Representative shall respond to the  
45 notice in writing within fifteen (15) working days. The response shall state that party's position  
46 as well as what, if any, corrective action the responding party agrees to take.

1  
2 C. The complaining party shall reply in writing, indicating either satisfaction  
3 or dissatisfaction with the response. If satisfied, any corrective action shall be taken within  
4 fourteen (14) working days of receipt of the responding party's reply unless otherwise mutually  
5 agreed. If dissatisfied, the complaining party shall call an in-person meeting. The meeting shall  
6 occur within a reasonable period of time and shall be attended by the Designated Representatives  
7 of each party, and such others as they individually invite.  
8

9 D. If the complaining party remains dissatisfied with the results of the  
10 meeting, it shall then refer the matter to the District Superintendent and Mayor, or their  
11 designees, for resolution. If the issue is not resolved at this level within thirty (30) days, then  
12 either party may require in writing that the matter shall be reviewed in a non-binding, structured  
13 mediation process developed on a cooperative basis by the parties and the parties shall consider  
14 in good faith any recommendations or settlements arising from such process. All of the steps  
15 preceding shall be a prerequisite to either party suing under this Agreement for breach, specific  
16 performance, or any other relief related to this Agreement.  
17

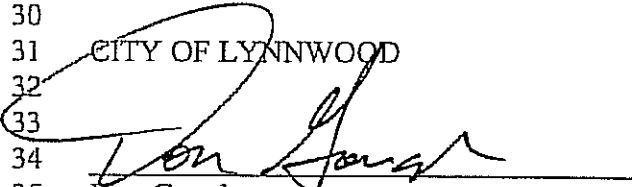
18 E. Each party shall designate a person who shall be responsible for handling  
19 the administrative needs with respect to their use of the above referenced Aquatic Facilities.  
20 The City's Designated Representative is the Aquatics Supervisor. The District's Designated  
21 Representative is Athletic Director.  
22

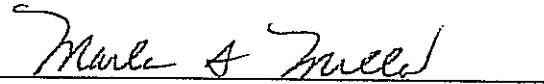
23 16. Integration. This writing contains all terms of this Agreement. It replaces all  
24 prior negotiations and agreements regarding the use of the City's Aquatic Facilities.  
25 Modifications must be in writing and be signed by each party's authorized representative.  
26

27 17. Severability. If any term of this Agreement is held invalid or unenforceable, the  
28 remainder of the Agreement will not be affected but continue in full force.  
29

30  
31 CITY OF LYNNWOOD

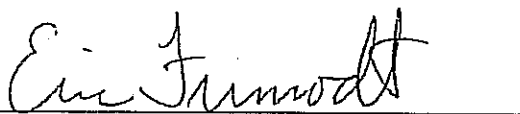
EDMONDS SCHOOL DISTRICT NO. 15

32  
33   
34 \_\_\_\_\_  
35 Don Gough  
36 Mayor  
37

38   
39 \_\_\_\_\_  
40 Marla S. Miller, Assistant Superintendent

38 Approved as to form:

Approved by the Edmonds School District #15  
School Board on December 16, 2008

41  
42   
43 \_\_\_\_\_  
Eric Frimodt, Assistant City Attorney