

Attachment B
2003-508
14809

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT ("Agreement") is entered into as of the 1st day of January 2004, by and between KING COUNTY, a political subdivision of the State of Washington (the "County"), MOUNT RAINIER POOL OWNERS, a coalition of the CITIES OF DESMOINES and NORMANDY PARK, both Washington municipal corporations ("Pool Owners"), and HIGHLINE SCHOOL DISTRICT NO. 401, a Washington municipal corporation (the "District") (collectively referred to herein as the "Parties").

WHEREAS, the County has leased certain real property from the District pursuant to the Lease Agreement dated March 6, 1974 ("Lease"), which is attached and incorporated herein as Exhibit A;

WHEREAS, the County has constructed a facility known as the Mount Rainier Pool ("Pool") on the property leased from the District pursuant to the Lease;

WHEREAS, the County and the Pool Owners have reached an agreement for transfer of ownership of the Pool from the County to the Pool Owners under that certain Pool Transfer Agreement entered into on or about the date hereof and dated as of January 1, 2004 ("Pool Transfer Agreement");

WHEREAS, the Lease should accordingly be assigned to the Pool Owners, and the District approves of such assignment, on the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the mutual promises made in this Agreement and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Assignment.

The County hereby assigns, transfers and conveys to the City of Des Moines and the City of Normandy Park, as co-owners and operating as the Mount Rainier Pool Owners coalition, all of the County's right, title, and interest in and to the Lease.

2. Assumption.

The Pool Owners hereby accept and assume all of the County's right, title and interest in and to the Lease and assume all obligations of any kind or nature under the Lease that arise after the date of this Agreement. The Pool Owners agree for themselves and their respective successors and assigns, to defend, indemnify, and

hold harmless the County, its appointed and elected officials and employees, from and against any and all claims, liability, damages, demands, suits, judgments, costs, including attorney fees and costs of defense (collectively, "Claims"), to the extent such Claims are caused by or arise out of the Pool Owners' breach or violation of the terms of the Lease or this Agreement. The foregoing notwithstanding, the Pool Owners shall have no obligation to defend, indemnify, or hold harmless the County, or any of its elected officials or employees, for any Claims relating to termination of the Lease after the mothballing or closure of the Pool as permitted under the terms of the Pool Transfer Agreement.

3. Cessation of Pool Owners' Operation of Pool.

3.1 The Pool Owners shall be entitled to close or cease operations of the Pool in the event that it becomes economically imprudent for the Pool Owners to continue to own, maintain and operate the swimming facility located on the premises and the Pool Owners have made all reasonable efforts to keep the Pool open and have complied with all obligations and conditions as set forth in the Pool Transfer Agreement. For purposes of this section, continued operation shall be deemed economically imprudent if the Pool Owners have complied with all obligations and conditions in the Pool Transfer Agreement for certification that the operations of the Pool are not economically viable (including, but not limited to, the requirements in Section 6.1 thereof) and are unable to adequately cover all costs of operating the swimming facility (including, but not limited to, reasonable allowances for overhead costs, reserves for repairs and capital improvements, and costs of insurance) with funds from operating revenues generated by the pool facility, funds from cities (and/or any other governmental or public support source (other than King County)), and any grants or donations from foundation or corporate donor resources that may be available to the Pool Owners for support of the facility.

3.2 If the Pool Owners intend to close or cease operating the Pool and convey the Pool back to the County, they shall provide the County and the District with written notice of such decision no less than ninety (90) days before the proposed date of reconveyance, and during such ninety (90) day period the Pool Owners, County and the District shall work together diligently and in good faith to seek to find another entity to assume ownership and/or operation of the Pool in an effort to prevent the Pool from being conveyed back to the County. Following compliance with all obligations and conditions of the Pool Transfer Agreement for transfer of the Pool, the Pool Owners shall convey the Pool free and clear of all liens and encumbrances and in good condition to the County (or to such other entity approved by the District) at the end of the ninety (90) day notice period. If no such other entity is so approved by the District, the Pool Owners shall convey the Pool to

the County in a state ready to be mothballed and shall take all actions necessary to maintain the Pool in such condition until said conveyance.

3.3 Upon conveyance of the Pool to the County pursuant to Section 3.2, the Lease shall terminate and the County shall have no obligation to operate the Pool or make the Pool available to or for the use of the District or others, and shall mothball the Pool in accordance with industry and County standards for a period of six (6) months ("Mothballing Period"). During the Mothballing Period, the County shall continue to secure and maintain the Pool building and associated property and shall carry insurance substantially similar to the insurance currently in place and carried by the County as of the date of this Agreement and consistent with the requirements of the Lease (whether or not the Lease is then in effect), provided, however, that the County may elect to self insure against tort liability arising from the Pool. During the Mothballing Period, the Parties will work together diligently and in good faith to seek to find another third party willing to assume ownership and operation of the Pool.

3.4 Upon the expiration of the Mothballing Period, the Pool's useful life as contemplated by King County Resolution 34571 shall expire. Following the Mothballing Period, the County may permanently close the Pool but shall continue to secure and maintain the Pool building and associated property and shall carry insurance substantially similar to the insurance currently in place and carried by the County as of the date of this Agreement and consistent with the requirements of the Lease (whether or not the Lease is then in effect), provided, however, that the County may elect to self insure against tort liability arising from the Pool.

3.5 At any time after a conveyance of the Pool to the County pursuant to Section 3.2 and prior to March 6, 2009, or at any time after a conveyance of the Pool to the District pursuant to Section 7.1 of the Pool Transfer Agreement and prior to March 6, 2009, the District may by written notice direct the County to demolish the Pool at the County's sole cost and expense. The County shall complete such demolition in a reasonable time, not to exceed one year, following its receipt of the written notice (even if such demolition extends beyond March 6, 2009). As used herein, "demolition" shall include, but not be limited to, the following: demolish the pool building and associated improvements; import fill at pool and foundation; remove sidewalks, underground utilities and asbestos (if any); remove all debris; grade and seed site; construction contract costs, including contractor's fees, construction management fees and general conditions; obtain all necessary permits; design and engineering; and payment of sales taxes and inspection costs.

3.6 All title and ownership to the Pool shall automatically transfer and revert to the District as of March 6, 2009 or upon such earlier date as the Pool is either closed by the

Pool Owners in accordance with Section 7.1 of the Pool Transfer Agreement or the Pool is demolished under Section 3.5 hereof. Upon such transfer to the District, the County shall have no further obligations or responsibilities under this Agreement or the Lease or regarding the Pool (except for the completion of demolition, if so directed by the District under Section 3.5). In such event, the County agrees that the District shall have no obligation to operate the Pool and no obligation to comply with any of the operating restrictions or deed covenants set forth in the Pool Transfer Agreement and any previous documents of record (and the deed to the District shall provide for the termination and release of all such restrictions and deed covenants), nor shall the District have any obligations whatsoever to operate or maintain the Pool or its related facilities and building. It is expressly understood and agreed that the District considers the ability to demolish the Pool or otherwise convert the Pool facility and the underlying property to another use to be a material consideration for its decision to agree to this Agreement, as well as to the release provided to the County in Section 4 of this Agreement.

4. Acceptance.

The District hereby approves and accepts the assignment of the Lease from the County to the Pool Owners pursuant to the terms contained in this Agreement and releases the County from all obligations under the Lease, provided, however, this release shall not constitute a release from liability as to any breach of the Lease by the County that occurred prior to the date of this Agreement or as to any breach of this Agreement by the County, nor shall it constitute a release as to any third party claim related to the County having agreed to an assignment of the Lease or having entered into the Pool Transfer Agreement with the Pool Owners.

5. No Other Amendments.

Except as modified or amended by this Agreement, all of the terms and conditions of the Lease remain unchanged.

6. General Provisions.

This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement. No provision of this Agreement may be amended or modified except by written agreement signed by the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties' successors in interest, heirs and assigns. Any provision of this Agreement that is declared invalid or illegal shall in no way affect or invalidate any other provision. In the event any of the Parties defaults on the performance of any terms of this Agreement or any Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each Party shall pay all its own attorneys' fees, costs and expenses. This Agreement shall be governed by the laws of the State of

Washington. The venue for any dispute related to this Agreement shall be King County, Washington. Failure of any Party to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.

7. Pool Use Agreement.

The Parties acknowledge and agree that the County has in the past allowed the District to use the Pool under the terms of a use agreement, and the Pool Owners will continue to do so under the terms of the most recent Pool Use Agreement entered into between the County and the District on June 1, 2003 (the "Pool Use Agreement"). Prior to the expiration of the Pool Use Agreement, the Pool Owners agree to engage in good faith negotiations to facilitate the District's continued use of the Pool during the term of the Lease, as contemplated by Section 2 of the Lease.

8. Notices.

All notices or communications by one of the parties hereto to the other shall be addressed, respectively, as follows:

If to the County:

King County
Shelley Marelli, Acting Manager
King County Parks and Recreation Division
King Street Center, 7th Floor
201 S. Jackson Street
Seattle, WA 98104

If to the District:

Dr. Joseph McGeehan
Superintendent
Highline School District No. 401
15675 Ambaum Blvd. S.W.
P.O. Box 66100
Seattle, WA 98166

If to the City of Des Moines:

Patrice Thorell
Director of Parks & Recreation
21630 11th Avenue South
Des Moines, WA
98198

If to the City of Normandy Park: City Manager
801 SW 174th St.
Normandy Park, WA
98166

Any party may change its address for notice as set forth above by giving written notice of a different address (or addresses) to each of the other parties in the manner specified in this Section 8. Except as otherwise expressly provided, any notice shall be deemed to have been given (a) three (3) business days after the mailing thereof when mailed by registered or certified mail (return receipt requested), (b) the next business day after delivery to any overnight courier service offering proof of receipt, (c) upon receipt if sent by facsimile (with copy by registered or certified mail, return receipt requested), or (d) upon receipt if by hand delivery.

The Pool Owners agree that a copy of any notice or other communication sent to the County pursuant to this Agreement or the Pool Transfer Agreement shall be sent simultaneously to the District.

9. Joint and Several Liability.

The City of Des Moines and the City of Normandy Park shall be jointly and severally liable for the obligations of the Pool Owners under this Agreement.

10. Counterparts.

This Agreement may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Agreement.

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.

14809

APPROVED AS TO FORM this
_____ day of _____, 2003.

DATED this _____ day of _____,
2003.

CITY OF DESMOINES

By _____
Richard S. Brown
Assistant City Attorney of Des Moines

By _____
Tony Piasecki
Its City Manager
At the direction of the Des Moines City
Council by motion regularly passed at an
open public meeting on _____,
2003.

APPROVED AS TO FORM this
_____ day of _____, 2003.

DATED this _____ day of _____,
2003.

CITY OF NORMANDY PARK

By _____
Susan Sampson
City Attorney of Normandy Park

By _____
Merlin MacReynold
Its City Manager
At the direction of the Normandy Park
Council by motion regularly passed at an
open public meeting on _____,
2003.

14809

APPROVED AS TO FORM this
_____ day of _____, 2003.

DATED this _____ day of _____,
2003.

HIGHLINE SCHOOL DISTRICT NO. 401

By _____
William L. Green
Attorney for Highline School District

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

APPROVED AS TO FORM this
_____ day of _____, 2003.

DATED this _____ day of _____,
2003.

KING COUNTY

By _____
Name: _____
King County Prosecuting Attorney

By _____
Name: _____
Its: _____
At the direction of the King County Council
by _____ regularly passed at an open
public meeting on _____, 2003.

14809

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2003, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Tony Piasecki, to me known to be the person who signed as City Manager of the CITY OF DESMOINES, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and acting as said officer of the municipal corporation, that he was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said municipal corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

(Signature of Notary)

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2003, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Merlin MacReynold, to me known to be the person who signed as City Manager of the CITY OF NORMANDY PARK, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and acting as said officer of the municipal corporation, that he was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said municipal corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

(Signature of Notary)

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at _____.
My appointment expires: _____.

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2003, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Dr. Joseph McGeehan, to me known to be the person who signed as Superintendent of HIGHLINE SCHOOL DISTRICT NO. 401, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and acting as said officer of the municipal corporation, that he was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said municipal corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

(Signature of Notary)

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My appointment expires: _____

14809

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2003, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the person who signed as _____ of KING COUNTY, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that _____ was duly elected, qualified and acting as said officer of the municipal corporation, that _____ was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said municipal corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

(Signature of Notary)

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My appointment expires: _____