



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

June 21, 2010

Ordinance 16859

Proposed No. 2010-0269.1

Sponsors Drago and Phillips

1 AN ORDINANCE authorizing the executive to enter into
2 the Evergreen Pool Asset Transfer Statement and Public
3 Use Agreement between King County and the Highline
4 school district regarding the ownership and operation of the
5 Evergreen pool.

6 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

7 **SECTION 1. Findings:**

8 A. In March 1970, King County ("the county") leased property at 606 SW 116th
9 Street in Seattle from Highline school district No. 401 ("the district") for forty years. As
10 part of Forward Thrust, the county constructed the Evergreen pool ("the pool") on the
11 leased property.

12 B. As a result of the county's fiscal challenges, the pool closed in September
13 2009, but has been maintained in a way that will allow the pool to be reopened with
14 minimal expense.

15 C. On March 25, 2010, the county's lease with the district expired, and title to the
16 pool automatically vested in the district. As a result, the county no longer owns the pool.

17 D. The county has reached an agreement with the district that will support the
18 reopening of the pool to provide recreational opportunities to the public at minimal
19 expense to the county.

20 E. The agreement provides that the county will contribute fifty thousand dollars
21 toward capital improvements at the pool and fifty thousand dollars toward operational
22 expenses to allow the pool to be reopened to the public for recreational uses. The district
23 in turn agrees to use reasonable efforts to keep the pool open at least through December
24 31, 2010, to provide recreational opportunities to the public.

25 F. The district has signed the agreement, retained a pool operator, and taken other
26 steps to reopen the pool for the benefit of the public.

27 SECTION 2. The King County executive is hereby authorized to enter into the

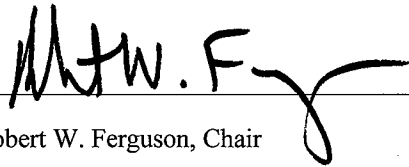
28 Evergreen Pool Asset Transfer Statement and Public Use Agreement, substantially in the
29 form of Attachment A to this ordinance.

30


Ordinance 16859 was introduced on 5/3/2010 and passed by the Metropolitan King
County Council on 6/21/2010, by the following vote:

Yes: 7 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Patterson,
Ms. Lambert, Mr. Ferguson and Mr. Dunn
No: 0
Excused: 2 - Ms. Drago and Ms. Hague

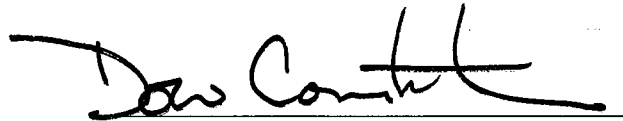
KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Robert W. Ferguson, Chair

ATTEST:


Anne Noris, Clerk of the Council

APPROVED this 1st day of July, 2010.


Dow Constantine, County Executive

RECEIVED
2010 JUL -1 PM 4:29
CLERK
KING COUNTY COUNCIL

Attachments: A. Evergreen Pool Asset Transfer Statement and Public Use Agreement

EVERGREEN POOL ASSET TRANSFER STATEMENT AND PUBLIC USE AGREEMENT

This ASSET TRANSFER STATEMENT AND PUBLIC USE AGREEMENT (the "Agreement") is executed by and between KING COUNTY, a home rule charter county and political subdivision of the State of Washington (the "County"), and HIGHLINE SCHOOL DISTRICT NO. 401, a municipal corporation (the "District" and, collectively with the County, the "Parties").

BACKGROUND

- A. In March 1970, to implement elements of King County Resolution 34571, also known as Forward Thrust, the County leased certain real property from the District for a period of forty (40) years. A copy of the 1970 lease (the "Lease") is attached hereto as **Exhibit A**. The leased property is located on the premises of the District's Evergreen High School and is more particularly described on **Exhibit B**, attached hereto (the "Property"). The Lease expired or will expire on March 25, 2010 (the "Transfer Date").
- B. Pursuant to the Lease, the County constructed on the Property a public swimming pool, known as Evergreen Pool (the "Pool"), located at 606 SW 116th Street, Seattle, WA 98146. Upon the Transfer Date, title to the Pool automatically vested or will vest in the District as a matter of law.
- C. Pursuant to the Lease, the Parties also entered into a separate Pool Use Agreement, a copy of which is attached hereto as **Exhibit C**, setting the terms and conditions under which the District would use the Pool during the term of the Lease. The Pool Use Agreement also expired or will expire on the Transfer Date.
- D. The County operated the Pool for benefit of the public until 2009, when a structural budget crisis forced the County to eliminate operations and maintenance of many local public recreation facilities in urban unincorporated areas of the County. The budget crisis forced the County to "mothball" the Pool and close it to public use at the end of August 2009.
- E. The Lease did not contain any specific terms or conditions relating to termination.
- F. The Parties anticipate that the District will execute a management agreement with a pool operator that will operate the Pool for benefit of the public and the District.
- G. The County is empowered to operate recreational facilities pursuant to RCW Ch. 36.68 and other authorities. The District is empowered to operate recreational facilities and make them available to the public pursuant to RCW 28A.335.150, -.250, and other authorities.

NOW, THEREFORE, in light of the fact that the Lease and the Pool Use Agreement have expired or will shortly expire, the County and the District agree as follows:

AGREEMENT

1. **Expiration of Lease and Pool Use Agreement.** The Parties agree that the Lease expired or will expire as of the Transfer Date. The District agrees that the County was released or will be released from all obligations of any kind or nature under the Lease, effective from and after the Transfer Date. The Parties agree that the Pool Use Agreement also expired or will expire as of the Transfer Date, and neither party has any further right, duty or obligation under the Pool Use Agreement from and after such date.

2. **District Takes Pool and Other Improvements "AS IS".**
 - 2.1 The Parties agree that the Pool is an improvement affixed to the leased property and cannot be removed from it without destroying the Pool and causing substantial damage to the leased property. The Parties agree that upon expiration of the Lease, title to the Pool automatically vested or will vest in the District as a matter of law. As evidence of such, the County has recorded or will shortly record a quitclaim deed in which the County assigned, transferred and conveyed to the District all of the County's residual right, title, and interest in and to the Pool and in and to any and all other County-made improvements on the leased property; and the District acknowledges the same. A copy of the deed is attached hereto as **Exhibit D**.

 - 2.2 The District acknowledges that as of the Transfer Date, the District is the sole owner of the Pool, which it takes in "AS IS" condition, and the District further acknowledges that the District has full and complete responsibility for all operations, maintenance, repairs, or improvements of, and provision of recreational services at, the Pool, effective as of the Transfer Date.

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

 - 2.4 The District acknowledges and agrees that the County shall have no liability for, and that the District hereby releases and shall have no recourse against the County for, any defect or deficiency of any kind whatsoever in the Pool without regard to whether such defect or deficiency was known or discoverable by the District or the County.

3. **Transfer to District of Personal Property Associated with the Pool.** The County has left or will leave on site existing equipment and supplies related to Pool operation and maintenance, together with other property annexed to or associated with the Pool (collectively, "the Personal Property"), which equipment and supplies may include 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. The District agrees that it takes all of the Personal Property "AS IS" and "WHERE IS" and agrees that effective as of the Transfer Date, the County holds no future responsibility with regard to the Personal Property or any occurrence related to or resulting from use of the Personal Property.

4. Public Use Agreement.

4.1 Public Use of Pool.

4.1.1 In consideration of the County's public use fee described in Section 4.2 of this Agreement, the District agrees that through December 31, 2010, the District will make a reasonable effort to provide, on a basis comparable to other swimming pools in the area owned and/or operated by municipal corporations, public access to the Pool for recreational swimming purposes. If the District closes the Pool to the public prior to December 31, 2011, the District shall return to the County any unexpended public use funds provided under Section 4.2.

4.1.2 The District agrees to use the public use fee in Section 4.2 to provide public opportunities for recreational swimming at the Pool.

4.2 County's Public Use Fee.

4.2.1 In consideration of the District's public use promises in Section 4.1 of this Agreement, the County agrees to pay the District a one-time public use fee of one hundred thousand dollars (\$100,000.00) as follows:

- (a) Fifty Thousand Dollars (\$50,000.00) to be used solely for capital improvements to the Pool in order to provide recreational swimming opportunities to the public; and
- (b) Fifty Thousand Dollars (\$50,000.00) to be used solely for Pool operating expenses incurred in providing the public with recreational swimming opportunities at the Pool.

As between the Parties, from and after the Transfer Date the District shall pay all other costs and expenses associated with or arising out of the development, improvement, operation, maintenance, or use of the Pool. The District will, upon the County's request, inform any inquiring person or entity that the County has no further financial obligations associated with the Pool once the County has paid the public use fee.

4.2.2 Nothing in this Agreement shall prevent the District from charging Pool users a reasonable fee to use the Pool and related facilities.

4.3 Timing of Public Use Fee Payment. The County shall pay the District the entire public use fee not later than June 30, 2010.

4.4 Records; Audit; Inspection. The District shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement.

5. Indemnification and Hold Harmless; Waiver of Immunity.

5.1 Indemnification and Hold Harmless. The District shall indemnify and hold harmless the County and its elected officials, officers, agents and employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, including, but not limited to, attorneys' fees, (i) which are caused by or result from any act or omission of the District, its officers, agents and employees in performing obligations pursuant to this Agreement, and/or (ii) arising from those occurrences related to the Pool that occurred on or after the Transfer Date. In the event that any suit based upon such a claim, action, loss or damage is brought against the County or the County and the District, the District shall defend the same at its sole cost and expense and, if final judgment be rendered against the County and its officers, agents and employees or jointly against the County and the District and their respective officers, agents and employees, the District shall satisfy the same. The District's duties under this Section 5.1 shall survive the termination or expiration of this Agreement.

5.2 Waiver of Immunity. For this purpose, the District, by mutual negotiation, hereby waives, with respect to the County 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 County.

6. **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
Kevin Brown, Director
King County Parks and Recreation Division
201 South Jackson Street, Suite 700
Seattle, WA 98104

If to the District:

Highline School District No. 401
15675 Ambaum Blvd. S.W.
Burien, WA 98166
ATTN: Geraldine Fain
Asst. Superintendent
Support Services

With a Copy to:

Andréa S. Johnson
Executive Director of Facilities
Highline Public Schools
Facilities Services Department
17810 8th Avenue S, Bldg. A
Burien, WA 981148-1788

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.

7. **Compliance with Applicable Laws.** The District shall comply with all applicable laws, ordinances and regulations in using funds provided by the County including all federal, state, and local non-discrimination laws and, to the extent applicable, those related to "public works," payment of prevailing wages and competitive bidding of contracts. The District shall indemnify and defend the County should it be sued or made the subject of an administrative investigation or hearing for a violation of such laws related to this Agreement or the Pool.
8. **Dispute Resolution.** In the event any dispute regarding this Agreement cannot be resolved by informal methods, the aggrieved party shall, prior to commencing litigation or taking any administrative action, notify the other in writing of the particulars of the grievance, and the other party shall reply in writing within ten (10) working days, setting forth its position and stating what, if any, action it will take with respect to the grievance. The aggrieved party shall respond in writing, indicating its satisfaction or dissatisfaction, as the case may be; in the event the

aggrieved party is dissatisfied, the Parties shall then meet in person and confer in good faith to resolve their differences before litigation is commenced. If litigation is commenced, venue shall be in Washington State Superior Court in and for King County, Washington. Nothing in this Section 8 shall limit or interfere with the County's reasonable exercise of its police powers.

9. **Recording.** This Agreement, and any memorandum thereof requested by any of the Parties, shall be made capable of being recorded with the King County Office of Records and Elections.
10. **Headings.** The headings in this Agreement are for convenience only and shall not be deemed to expand, limit, or otherwise affect the substantive terms of this Agreement.
11. **Amendments.** This Agreement may be modified or amended only if the amendment is made in writing and is signed by all of the Parties.
12. **General Provisions Regarding Effect, Construction, and Enforcement of this Agreement.** This Agreement contains all of the agreements of the Parties with respect to termination of the Lease and with respect to any matter covered or mentioned in this Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assigns. This Agreement creates no rights, duties, or obligations in any person or entity not a party to it. Any provision of this Agreement that is declared invalid or illegal shall in no way affect or invalidate any other provision. In the event either 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 in connection with this Agreement, 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, without reference to its choice of law provisions or conflicts of law rules. The venue for any dispute related to this Agreement shall be Washington State Superior Court in and for 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 or any subsequent breach or default. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.
13. **Counterparts.** This Agreement may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Agreement.
14. **Neutral Construction.** Each party has had the opportunity to consult with counsel in connection with the negotiation, execution and delivery of this Agreement. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of the Parties. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same will apply in

connection with the construction or interpretation of any of the provisions of this Agreement.

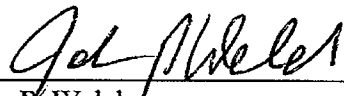
- 15. **Execution Authorized.** Each Party represents to the others that the execution of this Agreement has been duly authorized by all necessary action on behalf of such party and that the signatories below have the necessary authority to bind the Parties to all terms of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

King County

Highline School District No. 401

 Dow Constantine
 County Executive
 At the direction of the King County
 Council by _____ passed at an open
 public meeting on _____, 2010.



 John P. Welch
 Its Superintendent
 At the direction of the Highline School
 Board by resolution regularly passed at an
 open public meeting on March 24,
 2010.

Date

Date

Approved as to Form:

Approved as to Form:

 Name: _____
 Title: _____

 William L. Green
 Attorney for Highline School District

Date

Date

NOTARY BLOCKS APPEAR ON FOLLOWING PAGE

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

On this _____ day of _____, 2010, 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 individual described in and who executed the forgoing instrument as the _____ of KING COUNTY, and acknowledged said instrument to be the free and voluntary act and deed of KING COUNTY for the uses and purposes therein mentioned, and on oath stated that _____ was duly elected, qualified and acting as said officer of KING COUNTY, and that _____ was authorized to execute said instrument for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

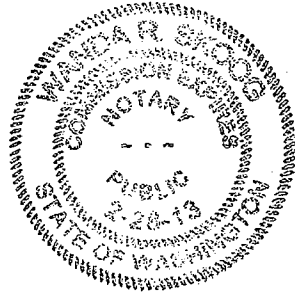
Signature

Print Name
Notary Public in and for the State of
Washington, residing
at _____
City and State
My appointment expires _____

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

On this 24th day of March, 2010, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared John P. Welch, to me known to be the person who signed as Superintendent of HIGHLINE SCHOOL DISTRICT NO. 401, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said 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 corporation, and that he was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.



Wanda R. Skoeg
Signature
Wanda R. Skoeg
Print Name
Notary Public in and for the State of
Washington, residing
at Burien, WA
City and State
My appointment expires 2-28-13

EXHIBIT A

Copy of 1970 Lease between County and District

EXHIBIT A PUR
 EXPIRES 3/27/2011

Evergreen

COPY

LEASE AGREEMENT

THIS LEASE made in quadruplicate this 25th day of March, 1970 by and between KING COUNTY, WASHINGTON, a legal subdivision of the State of Washington, and HIGHLINE SCHOOL DISTRICT No. 401, King County, Washington, a municipal corporation of the State of Washington:

WITNESSETH:

In consideration of the covenants and agreements of the Lessee hereinafter set forth, the School District does by these presents lease and demise unto King County that certain real estate described as follows:

Beginning at the Southwest corner of the Northwest Quarter of the Northeast Quarter of Section 7, Township 23, Range 4, Thence N. $89^{\circ} 46' 45''$ E. 331.77 ft. to the true point of beginning, Thence N. $1^{\circ} 25' 29''$ E. 333.50 ft., thence N. $89^{\circ} 46' 45''$ E. 300.00 ft., thence S. $1^{\circ} 25' 29''$ W. 333.50 ft. to the center line of S. W. 116th Street, Thence S. $89^{\circ} 46' 45''$ W. 300.00 ft. along the center line of said S. W. 116th St. to the true point of beginning. Less the South 30 ft. for County Road.

ALSO SUBJECT to a utility easement over and across the following described property:

Beginning 333.31 feet N. and 101.33 feet E. of S. W. corner of N. W. Quarter of N. E. Quarter thence N. $89^{\circ} 44' 50''$ E. 230.56 feet, thence S. $01^{\circ} 25' 29''$ W. 333.50 feet, thence E. 964.01 feet, thence N. $01^{\circ} 30' 41''$ E. 187.70 feet, thence N. $61^{\circ} 15' 21''$ W. 564.85 feet, thence N. $07^{\circ} 20' 01''$ E. 587.91 feet, thence N. $84^{\circ} 33' 05''$ W. 259.49 feet, thence N. $07^{\circ} 49' 01''$ W. 112.24 feet, thence S. $89^{\circ} 46' 22''$ W. 476.47 feet, thence S. 847.93 feet to beginning.

Known as Tax Lot 390, Section 7-23-4, King County, Washington.

The term of such lease shall be for a period of forty (40) years from the date above written.

King County accepts the premises in the present condition and for the purpose of immediately constructing thereon a major indoor swimming pool.

King County shall be responsible for all charges for utilities or governmental charges that should be levied against the property and shall keep the property in good repair and insured against all damage and liability resulting from the use thereof.


King County shall at times when facilities on the leased premises are not to be used by King County permit the School District to use such facilities subject to a rental agreement between the two agencies.

King County agrees to hold the School District harmless and to indemnify and defend the School District against any claim or liability for damage to any person or property and costs incident thereto arising with respect to the leased premises, except when such damage is a result of School District sponsored or controlled activities on the leased premises or where such damage is attributable to some act or omission of the School District.

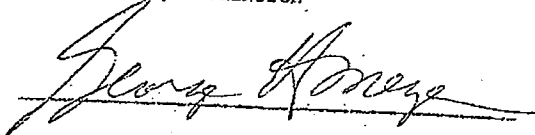
The School District agrees to hold King County harmless and to indemnify and defend King County against any claims or liability for damage to any person or property and costs incident thereto caused by the negligence of the School District or as a result of School District sponsored or controlled activities on the leased premises, and where such damage is not attributable to some act or omission of King County.

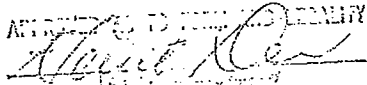
This lease shall be reviewed after 5 years with the intent at this date that it be renewed for at least the life of the building on the premises.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the date first above written.


JOHN D. ZELLMAN 5-6-70
COUNTY EXECUTIVE

SCHOOL DISTRICT NO. 401
KING COUNTY, WASHINGTON



ATTESTED TO THE

4-21-70

STATE OF WASHINGTON)
 * ss.
COUNTY OF KING)

On this 25th day of March, 1970, before me,
the undersigned, a Notary Public in and for the State of Washington, duly
commissioned and sworn, personally appeared George H. Meyer,
President of the Board of Directors of Highline School District No. 401
to me known to be the individual described in and who executed the fore-
going instrument, and acknowledged to me that he signed and sealed
this said instrument as his free and voluntary act and deed for the
uses and purposes therein mentioned.

GIVEN under my hand and official seal this 25th day of March,
1970.

Dean S. Howe
NOTARY PUBLIC in and for the State of
Washington, residing at Seattle

EXHIBIT B**Legal Description of Leased Property**

Beginning at the Southwest corner of the Northwest Quarter of the Northeast Quarter of Section 7, Township 23 North, Range 4 East Willamette Meridian; Thence West 89 46' 45" East 331.77 feet to the true point of beginning; Thence West 1 25' 29" East 333.50 feet, thence North 89 46' 45" East 300.00 feet, thence South 1 25' 29" West 333.50 feet to the center line of Southwest 115th Street, thence South 89 46' 45" West 300.00 feet along the center line of said Southwest 116th Street to the true point of beginning; less the South 30 feet for county road.

ALSO a utility easement over and across the following described property:

Beginning 333.31 feet West and 101.33 feet East of the Southwest corner of the Northwest Quarter of the Northeast Quarter of Section 7, Township 23 North, Range 7 East, Willamette Meridian; Thence North 89 44' 50" East 230.56 feet, thence South 01 25' 29" West 333.50 feet, thence East 964.01 feet, thence North 01 30; 41" East 187.70 feet, thence North 61 15' 21" West 654.85 feet, thence North 07 20' 01" East 587.91 feet, thence North 85 33' 05" West 259.49 feet, thence North 07 49' 01" West 112.24 feet, thence South 89 46' 22" West 478.47 feet, thence South 847.93 feet to beginning.

ALSO KNOWN AS King County assessor tax parcel no. 072304-9390.

EXHIBIT C

Copy of Pool Use Agreement

08/10/1

City of...

7/10/08

Evergreen 1001

16859

**KING COUNTY PARKS AND RECREATION DIVISION AND
HIGHLINE SCHOOL DISTRICT NO. 401**

POOL USE AGREEMENT

THIS POOL USE AGREEMENT is made and entered into this 1st day of July, 2008, between Highline School District No. 401, hereinafter referred to as the "District," and King County Division of Parks and Recreation, a legal subdivision of the State of Washington, hereinafter referred to as "King County," for the use, by the District, of Evergreen Forward Thrust Pool, showers, locker rooms and related facilities, hereinafter referred to as "Swimming Pool(s)".

WHEREAS the District, desires to use King County facilities for conducting certain programs of instruction in swimming and aquatic sports and King County desires to have the District use King County Swimming Pools for such purposes; and

WHEREAS King County is willing to allow the District to use King County Swimming Pools, in return for payment of rent and the District is willing to pay rent at an hourly rate for its use of a Swimming Pool, therefore, in consideration of the promises herein the parties agree as follows:

1. TERM OF AGREEMENT, HOURS AND RATE OF RENT. The term of this Pool Use Agreement shall be from ~~July 1, 2008 to June 30, 2009~~. The District shall be entitled to use King County Swimming Pools beginning July 1, 2008. The specific hours of pool use shall be determined and agreed upon by the District and the County Pool Manager of each King County Swimming Pool used. The Hourly School Program Schedule may be adjusted only upon written notice to the County Pool Manager of each Swimming Pool used for the following:

- a) The Instructional Program Hours as agreed upon.
- b) The Interscholastic Program Hours as agreed upon.

In addition, when King County has not scheduled a Swimming Pool's use to others, the District may upon reasonable notice to King County, request permission to use the Swimming Pool for additional hours on school or non-school days. King County shall not unreasonably withhold its permission.

The District shall pay King County \$60.00 per hour for pool use in 2008-2009 school year, except at the Weyerhaeuser-King County Aquatic Center, which is \$60.00 per hour or \$12.00 per lane per hour. The rates for the 2008-2009 school year are set forth in King County Ordinances. The rates for the 2008-2009 school year will be determined in November 2008.

In the event that the parties fail to timely execute a new Pool Use Agreement upon the expiration of this agreement, the terms of this Pool Use Agreement shall remain in full force and effect, until a new Pool Use Agreement is executed or until this Pool Use Agreement is terminated pursuant to Section (9) herein.

RECEIVED

AUG 29 2008

KING COUNTY PARK

16859

2. **SUPERVISORY AND INSTRUCTIONAL PERSONNEL.** All persons empowered by the District with supervision and/or responsibility for the various school aquatic programs shall have current lifeguard training certification, current CPR certification, and current first aid certification. The District personnel acting as dive coaches may substitute United States Diving National Safety Certification in place of life guard training. Swim coaches may substitute United States Swimming Safety Training for Swim Coaches in place of life guard training.

The District assumes full responsibility for ensuring compliance with this Section (2) and acknowledges that King County is not responsible for ensuring compliance with this Section.

3. **EQUIPMENT.** Equipment necessary for the District program shall be provided by the District except when King County, by separate written agreement, provides equipment for use in the District's program.
4. **SAFETY REGULATIONS.** The District programs shall be conducted in conformance with all applicable safety regulations adopted by the State of Washington as now enacted or as hereinafter amended.

The District assumes full responsibility for ensuring compliance with this Section (4) and acknowledges that King County is not responsible for ensuring compliance with this Section.

5. **PROCEDURE FOR NEEDS AND COMPLAINTS.** Each party shall designate a person who shall be responsible for handling the administrative needs with respect to their use of Swimming Pools. Suggestions and/or complaints between the parties shall be transmitted through such persons.
6. **INCORPORATION OF AGREEMENT REGARDING ACTIVE RECREATIONAL PROGRAMS.** The Agreement between King County and Highline School District No. 401 Regarding Active Recreational Programs dated June 7, 1999, is hereby incorporated by reference into this Agreement.
7. **SEVERABILITY.** If any provision of this Agreement or the application of any term or provision to any person or circumstance is invalid or unenforceable, the remainder of this agreement, or the application of the term or provision or persons or circumstances other than those as to which it is held invalid, or unenforceable, will not be affected and will continue in full force.
8. **NON-WAIVER.** Failure of King County to insist on strict performance of the terms, agreements and conditions herein contained, or any of them, shall not constitute or be construed as a waiver or relinquishment of King County's right thereafter to insist on compliance with any such term, agreement, or condition, but the same shall continue in full force and effect.

16859

9. TERMINATION. This Pool Use Agreement may be terminated by King County or by the District upon written notice to the other party at least thirty (30) days in advance of the intended termination date.

By: Thomas Honey

KING COUNTY PARKS AND
RECREATION DIVISION
REPRESENTATIVE

Date: 9-3-08

By: Paul Bauer

HIGHLINE SCHOOL
DISTRICT No. 401

Date: 8-28-08

EXHIBIT D

Copy of Deed to Pool

AFTER RECORDING RETURN TO:
Room 500 King County Admin. Bldg.
500 Fourth Avenue
Seattle, WA 98104
ADM-ES-0500

BARGAIN AND SALE DEED

Grantor -- King County, Washington
Grantee -- Highline School District 401
Legal ---- NW ¼ NE ¼ SEC 7 TWN 23N R4E, WM
Tax Acct. -- 072304-9390

The Grantor, KING COUNTY (the "County"), a political subdivision of the State of Washington, for and in consideration of mutual benefits, and pursuant to King County Ordinance No. _____, does hereby bargain, sell and convey unto the HIGHLINE SCHOOL DISTRICT 401, a special purpose local government (the "District"), the following real property improvements, situated in King County, Washington, and referred to herein as the "Pool" and the "leased property":

EVERGREEN POOL

Those real property improvements, including fixtures and equipment, located on the following described property:

Beginning at the Southwest corner of the Northwest Quarter of the Northeast Quarter of Section 7, Township 23, Range 4 East, W.M.; thence North 89° 46' 45" East 331.77 to the true point of beginning; thence North 1° 25' 29" East 333.50 feet; thence North 89° 46' 45" East 300.00 feet; thence South 1° 25' 29" West 333.50 feet to the centerline of Southwest 116th Street; thence South 89° 46' 45" West 300.00 feet to the true point of beginning; less the South 30 feet for County Road.

ALSO a utility easement over and across the following described property:

Beginning 331.31 feet North and 101.33 feet East of the Southwest corner of the Northwest Quarter of the Northeast Quarter of Section 7, Township 23, Range 4 East, W.M.; thence North 89° 44' 50" East 230.56 feet; thence South 01° 25' 29" West 333.50 feet; thence East 964.01 feet; thence North 01° 30' 41" East 187.70 feet; thence North 61° 15' 21" West 564.85 feet; thence North 07° 20' 01" East 587.91 feet; thence North 84° 33' 05" West 259.49 feet; thence North 07° 49' 01" West 112.24 feet; thence South 89° 46' 22" West 476.47 feet; thence South 847.93 feet to beginning.

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ALSO KNOWN AS King County assessor tax parcel 072304-9390.

Dated this _____ day of _____, 2010.

KING COUNTY, WASHINGTON

BY _____

TITLE _____

Dated this _____ day of _____, 2010.

HIGHLINE SCHOOL DISTRICT 401

BY _____

TITLE _____

NOTARY BLOCKS APPEAR ON PAGE 3

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STATE OF WASHINGTON)
) SS
COUNTY OF KING)

I certify that _____ signed this instrument, on oath stated that he was authorized by the King County Executive to execute the instrument, and acknowledged it as Manager of the Real Estate Services Section of King County, Washington to be the free and voluntary act of said County for the uses and purposes mentioned in the instrument.

Dated _____

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

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

I certify that _____ signed this instrument, on oath stated that he was authorized by _____ to execute the instrument, and acknowledged it as _____ of Highline School District 401 to be the free and voluntary act of said District for the uses and purposes mentioned in the instrument.

Dated _____

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