

28E Agreement
Between The City of Iowa City
and
The Iowa City Community School District
Providing for the Development, Ownership, Lease,
Management and Operation of a Joint Swimming Pool Facility
At Mercer Park

COPY

Witnesseth:

Whereas, the City of Iowa City (hereafter "the City") and the Iowa City Community School District (hereafter "the District") did, with the assistance of a Joint Swimming Pool Committee established by said bodies, undertake to study the feasibility and plan the development of a joint swimming pool facility to be located adjacent to Mercer Park and Southeast Junior High in Iowa City, Iowa; and

Whereas, upon the recommendation of the Joint Swimming Pool Committee, the City and the School District did enter into a Memorandum of Agreement, dated May 6, 1986, stating their intent to enter into an agreement pursuant to Chapter 28E of the Iowa Code, for the development, ownership, lease, management, and operation of a joint swimming pool facility adjacent to Mercer Park and Southeast Junior High in Iowa City, which Agreement is incorporated herein by reference; and

Whereas, upon the recommendation of the Joint Swimming Pool Committee, the City Council of the City of Iowa City did call a special election upon the proposal to issue \$3,715,000 of general obligation bonds to finance the renovation of the City Park Pool Facility and to finance the City's share of the construction of the joint swimming pool facility; and

Whereas, at said special election held on June 3, 1986, the electorate of Iowa City approved the issuance of general obligations bonds for said purposes; and

Whereas the parties hereto desire to effectuate the will of the people as expressed in said election, and to that end have caused this Agreement to be prepared and executed.

Now, Therefore, the City and the School District (hereafter "the parties") do hereby agree as follows:

Part I - Joint Exercise of Powers Under Chapter 28E of the Code of Iowa.

1. Pursuant to Chapter 28E of the 1985 Code of Iowa, the parties do hereby agree that the purpose of this Agreement is to jointly exercise their respective powers to finance, develop, construct, own, operate and manage a public improvement, to wit, a swimming pool for the use of the public and for the use of public school students.
2. The parties hereby agree that this Agreement shall be effective upon its execution by both parties, and that the duration of this Agreement shall be coterminous with the lease provisions hereof, Part III, which lease is

for an initial term of ten years commencing as set forth in Part III, paragraph 1, with guaranteed options for renewal of the lease provisions as provided in Part III, Section 7 hereof.

3. The parties hereby agree that the City Manager of the City of Iowa City shall be designated as the administrator for purposes of this Agreement as provided by Section 28E.6 of the Code of Iowa, and that the City Manager shall administer the contracts for the design and construction of the joint facility, and shall administer the management and operation of the facility after completion of construction.
4. The City and the School District hereby agree that the development, construction, and equipping of the joint swimming pool facility shall be jointly financed by them as provided in Part II hereof, and that the operation and management of the facility shall be jointly funded by them as provided in Part III, Section 5 hereof.
5. The City and the School District hereby agree that the joint swimming pool facility shall be constructed and located upon the property described in Exhibit A hereto (hereafter "the property"), which is property owned by the School District as of the date of this Agreement. Upon approval of the Plans and Specifications for the joint swimming pool facility as provided in Part II, Section 2 hereof, the School District shall convey said property to the City by Warranty Deed in the form attached hereto as Exhibit E.

The parties further agree that School District's conveyance of the property described in Exhibit A, its contribution of funds for construction as provided in Part II, Section 6, and its ongoing payment of its share of the costs of operation and maintenance of the facility as provided in Part III, Section 5 shall constitute its consideration for the City's development and construction of the joint swimming pool facility and for its use of the facility during the initial lease term hereof, and during any renewal lease term as provided herein.

Upon termination of this Agreement as provided in Part IV, Section 2, or non-renewal as provided in Part III, Section 7, the School District's interest in said facility, and its right to occupy and use same, shall cease. The City shall thereafter have unencumbered ownership and use of the facility provided, however, that in the event the City constructively abandons its use of the property for swimming pool purposes, the School District shall have the right to seek a writ of ejectment and to re-enter and take possession thereof. Such right of entry shall not automatically accrue upon abandonment by the City. In the event the property reverts to the School District, the School District shall thereafter have responsibility to maintain the property and the facilities located thereon, or to demolish same, at its expense.

Part II - Development and Construction of Joint Swimming Pool Facility.

1. The parties hereby agree that the City will undertake to procure contracts for the design and construction of the joint swimming pool facility (hereafter "the facility"). The Plans and Specifications incorporating design of the facility will be in substantial conformance with the preliminary conceptual design prepared by Neumann Monson P.C.,

architectural consultants to the Joint Swimming Pool Committee, as set forth in the report of the Joint Swimming Pool Committee dated March 27, 1986, which report is incorporated herein by reference.

2. The parties further agree that upon submission of the Plans and Specifications to the City by the project architect, the City will submit same to the School District for its review and approval. If the final design as reflected in the Plans and Specifications is in substantial conformance with the preliminary conceptual design, or is otherwise acceptable to the School District, the School District shall be required to approve same by resolution of its board. Upon approval of the Plans and Specifications, the School District shall convey the property to the City. If for any reason the City does not award a contract to construct the joint pool facility, the City agrees to convey the property back to the School District.
3. The City agrees that, after it has by resolution approved the Plans and Specifications, form of contract, and estimate of project cost pursuant to §384.102 of the Code of Iowa, and after the School District has conveyed the property to the City, it will undertake to secure a bid or bids for construction of the joint swimming pool facility. The City shall have sole responsibility for the competitive bid procurement and contract award process, which process shall be conducted in conformance with Chapter 384 of the Code of Iowa.
4. The parties agree that the City will be bound to accept a bid or bids for construction of the facility and to award a contract or contracts for construction only if the low bid or bids received (1) will allow the joint swimming pool facility to be constructed as designed for an amount not exceeding the estimated cost thereof, \$3,198,100, as approved by the City Council, (2) are from a responsible bidder or bidders acceptable to the City Council, and (3) are responsive, complete, and in satisfactory form.
5. The School District agrees to designate and appoint a project representative to act on its behalf during the construction phase for purposes hereafter specified.
6. The School District agrees that upon the City's award of a contract or contracts for construction of the joint swimming pool facility, it shall be obligated to contribute to the City the sum of \$500,000 as its share of the costs of construction of the facility. The said \$500,000 contribution shall be paid to the City as follows:
 - (a) \$50,000 to be paid within 30 days of the City's award of the contract or contracts for construction.
 - (b) Periodic progress payments, each payment to be due and payable within 15 days of the City's approval of each progress payment to the contractor(s), the amount of each such payment to be calculated as follows:

$$[\$450,000 \div \text{total construction cost as per construction contract(s)}] \times \text{approved amount of each progress payment to contractor(s)} = \text{amount of School District's periodic progress payment to the City.}$$

(c) A final payment as per the final accounting pursuant to paragraph 9 herein below.

The School District's project representative shall process all periodic progress payments on behalf of the School District.

- 7. All change orders to delete or add items shall be submitted to the School District for approval or disapproval. The School District shall approve or disapprove proposed change orders submitted by the City in writing within seven working days of their submission. If the School District fails to respond within said seven day period, the School District shall be deemed to have approved the change order.
- 8. In the event that the facility is constructed for an amount less than that shown in the construction contract(s) as awarded, the School District shall nonetheless be obligated to make a principal contribution of not less than \$500,000 toward the cost of construction of the joint swimming pool facility. If after making the final periodic progress payment as provided in paragraph 6(b) above, the School District's principal contribution stands at less than \$500,000, the remainder thereof shall be assessed to the School District in the City's final accounting and shall be paid as part of the School District's final payment.

- 9. Within 90 days after the City's final acceptance of the work on the joint swimming pool facility, or within 30 days after final payment to the construction contractor(s), whichever occurs later, the City shall make a final accounting of all expenses which it has incurred under the contract(s) for the construction of the facility. Said accounting shall show (a) the total amount of all progress payments made to the contractor(s); (b) all periodic progress payments made to the City by the School District; and (c) the principal amounts of any such periodic progress payments remaining unpaid. In the event the facility is constructed for an amount less than that shown in the construction contract(s) as awarded, the accounting shall also show the amount remaining to be paid by the School District to bring its principal contribution to the project to \$500,000.

All amounts due the City as of the date of the final accounting shall be combined in a single final payment figure and shown on the final accounting.

- 10. The parties agree that the School District's final payment, as per paragraphs 6(c) and 9 above, shall be due and payable within 30 days after the City's submission of the final accounting to the School District. If the amount of the final payment tendered by the School District is acceptable to the City, the City shall accept same by resolution, which acceptance shall be made within 30 days of the School District's tender thereof. If the City does not take action to either accept or reject said final payment, it shall be deemed to have been accepted by the City on and as of the 31st day following tender.

Part III. Lease, Management and Operation of Joint Swimming Pool Facility.

1. Premises and Term.

The City, in consideration of the School District's conveyance of the property to the City, its contribution of \$500,000 toward the cost of construction of the joint swimming pool facility, and its ongoing commitment contained herein to pay as rental a percentage contribution toward the expense of operating and maintaining the facility, does hereby lease the joint swimming pool facility to the School District for the use and benefit of the public school students in Iowa City.

This lease, and the School District's right to occupy and use the facility as provided herein, shall commence at midnight on the day that the City opens the pool facility for public use, and shall terminate at midnight on said date ten years hence, unless terminated earlier or renewed pursuant to further provisions hereof.

2. Possession and Use of Premises.

The parties agree that the School District's right to occupy and use the leased premises is not exclusive, it being the intent of the parties that the pool itself is to be shared and jointly used by the public and by public school students pursuant to a "Pool Use Schedule" to be jointly developed and periodically updated by City and School District representatives as hereinafter provided. The leased premises shall also include the office, locker rooms and storage spaces tentatively identified in Exhibit B hereto. The office area and storage space so identified shall be reserved for the exclusive use of the School District during the term of this lease. In addition, either one or two locker rooms, depending on the need, shall be reserved for exclusive use by the School District during those hours of School District use. The parties agree that flexibility is needed in this regard.

3. Pool Use Schedule and Hours of Operation.

The parties agree that their respective representatives shall develop a "Pool Use Schedule" prior to the commencement of the term of this lease. The Pool Use Schedule shall be updated by June 1 of each year for the next fiscal year beginning July 1. The Pool Use Schedule shall identify the hours during which the pool, or any portion thereof, is to be used by the School District or by the City. For purposes of this provision, any use of the pool or locker rooms, or a portion thereof, which is exclusively for the benefit of public school students or public school personnel or instructors, or which is conducted under the auspices, supervision or control of School District personnel, shall be considered to be use of the facility by the School District. Competitive events sponsored by the District between Iowa City public school students and students of other school systems shall be considered School District use. All other uses of the pool shall be considered to be City use of the pool. The parties agree that their representatives may amend or adjust the Pool Use Schedule from time to time as program needs and exigencies require.

In those instances where the pool will be used simultaneously by the City and the School District, the Pool Use Schedule shall indicate the percentage of pool area to be used by each for purposes of apportioning costs of operation and maintenance. The pool facility shall be available for use by the School District for a period of not less than 30% of its total annual operating hours. School District use of the facility in excess of this percentage shall be by mutual agreement of the parties as reflected in the Pool Use Schedule.

The parties agree that the City shall keep and maintain records of actual pool usage by each party, for all usage during, as well as outside of, normal operating hours. The City shall provide such records to the School District on a monthly basis. Said records shall be deemed approved by the School District if not objected to within ten days of receipt.

The parties further agree that during the first fiscal year of operation, the pool shall be operated at least 92 hours per week for 51 weeks (a total of 4,692 hours per year), assuming that the pool opens at the beginning of that fiscal year. Thereafter, the pool shall be operated for the same total hours per week and per fiscal year, unless the total operating hours are adjusted pursuant to paragraph 5 of this Part.

The normal hours of pool operation each week shall be determined by mutual agreement of City and School District representatives, and shall be set forth in the Pool Use Schedule; provided, however, that the City may adjust the pool opening and closing times to more closely match public demand, so long as the pool is open for a minimum of 92 hours per week, and so long as such adjustments do not interfere with School District use of the pool facility.

The use of any portion of the facility by the City or by the School District outside of said normal hours of operation shall be deemed to be exclusive use by that party, unless its use is shared by the parties during such times. The City may provide, but shall not be required to provide, general supervisory or custodial services during exclusive School District use of the facility when such use occurs outside of the normal operating hours.

4. Operation and Maintenance.

The City shall have the responsibility and the exclusive authority for the operation and maintenance of the joint swimming pool facility. The City shall have responsibility to properly operate and maintain the facility, including the building, grounds, and equipment, shall have responsibility to provide general supervision of the entire facility during normal operating hours, and shall have responsibility to provide lifeguards to supervise the public use of the pool during periods of exclusive City use or shared use with the School District.

The operation of the facility shall be under the general administration and supervision of the City Manager of the City of Iowa City, who may delegate responsibility for the day to day operation of the facility to the City Director of Parks and Recreation, or such other individual as the City Manager may from time to time designate.

The School District shall have sole responsibility to provide appropriate personnel to supervise use of the pool by its students, faculty and staff during periods of exclusive School District use or shared use with the City. Such supervisory personnel must be present in the pool area at the time School District use commences, and shall remain present in the pool area during the entire time of such use.

5. Budget and Cost Sharing/School District's Minimum Cost Share.

On or before January 15 of each year, the City shall cause to be prepared a preliminary fiscal year line item budget for the operation and maintenance of the joint swimming pool facility for the next succeeding fiscal year, and shall cause said budget to be submitted to the School District for its consideration in the preparation of its budget for the next succeeding fiscal year. The final budget for the facility as approved by the City Council shall be submitted to the School District on or before March 1. The City will consult with the School District regarding any changes between the preliminary and final budget for the facility.

Said budget shall reflect estimated expenses for operation and maintenance of the facility in the expense categories shown on the Proposed First Year Budget for the facility, Exhibit C hereto.

The parties do hereby agree to annually budget and contribute monies during the term of this Agreement to defray the expense of operating and maintaining the joint swimming pool facility. The parties further agree that the City shall have responsibility to budget for and pay all costs and expenses associated with operation and maintenance of the facility as they accrue, and to act as comptroller in that regard. The School District hereby agrees, for so long as it shall retain the right to occupy and use the facility under this lease, to contribute monies to the City to assist in defraying the City's costs and expenses in operating and maintaining the facility, which contribution shall be considered to be rental and to constitute consideration for its continued use and occupancy of the facility. The School District agrees that it shall be obligated to contribute annually during each fiscal year, as its share of said expenses, an amount equal to 30% (the minimum cost share percentage) of the cost share items identified in the adopted budget for the facility, or a percentage contribution to those cost share items equal to its actual annual percentage of pool usage, whichever is greater. For purposes of this provision, (a) cost share items shall mean those cost and expense items from the fiscal year budget for the facility which the parties have agreed to share, which cost share items are identified in Exhibit C hereto; and (b) the actual annual percentages of pool usage shall be calculated as shown in Exhibit D hereto.

However, the School District's minimum cost share percentage is subject to adjustment by written addendum hereto in either of the following ways:

- (A) In the event that, during the first three full fiscal years that the pool facility is open and operated pursuant to this Agreement, the City and the School District agree (1) to increase the total minimum hours of use assigned to the School District each year, and/or (2) to increase or decrease the total minimum hours of use assigned to

the City each year, as reflected in Exhibit D, then in that event the following adjustments shall be made in the School District's minimum cost share percentage:

City's Assigned Hours of Pool Use	School District's Assigned Hours of Pool Use	School District's Minimum Cost Share Percentage
Decreases	Remains the same	Goes over 30%
Increases	Remains the same	Goes below 30%
City increase proportional to	School District increase	Stays the same

- (B) In any fiscal year of operation after the first full three years, the School District shall be entitled to have its minimum cost share percentage reduced by 1% for each such fiscal year, to be accompanied by a corresponding reduction in the School District's assigned hours of pool use for that year, provided that the School District shall have given the City notice to reduce its minimum cost share percentage on or before December 31 preceding the commencement of the fiscal year for which such reduction is sought, and provided that the School District shall be entitled to no more than five such reductions.

Such adjustments shall be reflected in Exhibit D hereto, which shall be amended by addendum. In no event shall the School District's minimum cost share percentage, after adjustment pursuant to (A) and/or (B) above, go below 25%.

In the event of an adjustment to the School District's minimum cost share percentage pursuant to (A) and/or (B) above, the City and the School District agree that the School District shall be obligated to contribute annually thereafter during each fiscal year, as its share of operation and maintenance expenses, an amount equal to the School District's adjusted minimum cost share percentage applied to the cost share items identified in the adopted budget for the facility, or a percentage contribution to those cost share items equal to its actual annual percentage of pool usage, whichever is greater.

The School District does further agree to pay its annual fiscal year contribution in 12 equal monthly payments, each monthly payment equal to 1/12 of the appropriate percentage of the cost share items identified in the adopted budget for the facility for that fiscal year, plus a final payment for that year as calculated and set forth in a reconciliation report as hereafter provided. Each monthly payment shall be made in advance, on or before the 20th day of the preceding month.

During the first fiscal year of pool use pursuant to this Part III, the respective cost shares of the parties, and the School District's monthly payments shall be calculated on the basis of the Proposed First Year Budget, Exhibit C hereto. The School District's first monthly payment

shall be paid in advance and shall accompany the School District's final payment of its contribution to the cost of construction, as per Part II, Section 10 hereof.

The City agrees that at the close of each fiscal year it will prepare a reconciliation report and that it will forward said report to the School District on or before August 31 of each year. Said report shall reflect actual costs and expenses for all budgeted line items in the budget for the facility for the preceding fiscal year, actual costs and expenses for cost share items in said budget, as well as unbudgeted costs incurred. Said report shall also set forth the City's and the School District's actual hours of pool usage for the preceding fiscal year, based on pool use records kept by the City.

The reconciliation report shall set forth the calculation of each party's percentage of pool usage for the preceding fiscal year, which percentages shall be calculated by dividing each party's actual hours of usage for that year by the total hours of usage by both parties combined during that year. Total hours of usage shall include hours of usage by the parties outside of normal operating hours.

The reconciliation report shall also set forth the calculation of the School District's final payment, which figure shall be calculated by applying the School District's actual annual percentage of pool usage for that fiscal year to the actual costs and expenditures for cost share items for that year, as reflected in said report, less the total amount of School District monthly payments already paid for that year.

In the event that the City's actual expenses for cost share items for operation and maintenance of the joint pool facility are less than what was budgeted, and if, after applying the School District's actual annual use percentage to said actual expenses for cost share items, or its minimum cost share percentage, whichever is greater, it is determined that the School District has paid monthly payments for said fiscal year which total in excess of the amount it should have paid, then in that event said overpayment shall be reflected in the reconciliation report as a refund payment to the School District.

The School District shall either approve or object to said reconciliation report within 30 days of receipt thereof. Said report shall be deemed to be approved by the School District if not objected to within said 30-day period.

The parties agree that the School District's final payment, or the City's refund payment, as set forth in the reconciliation report, shall be due and payable within 30 days after the School District's approval of the reconciliation report.

6. Assignment and Sublease Prohibited.

The School District's leasehold interest in the joint pool facility, including its right to occupy and use the facility, shall not be assignable to any person or entity for any purpose, nor shall the School District sublease its right to use and occupy the facility even if only

temporarily, except as hereafter provided. The School District shall be allowed to make the pool available for use by the following groups, organizations, or programs:

1. The Systems Unlimited School Age Program
2. The School District's Wellness Program
3. The School District's Pre School Programs
4. The School District's Athletic Teams
5. The School District's Sponsored Aquatics and Synchronized Swimming Class

No other such group, organization, or program shall be allowed to use the pool without the prior written consent of the City Manager or his/her designee.

The School District shall not charge a fee to any person, group, or entity using the facility under its auspices, except for (1) entry fees for participants and spectator fees in competitive swim events sponsored or hosted by the School District, and (2) except for entry fees to cover costs of supervision for School District sponsored parties or fitness/wellness programs for students, faculty and/or staff.

7. Renewal.

The parties agree that the School District shall have the option to renew its lease of the pool facility for four additional periods of five years each upon the same terms and conditions as provided herein, provided that the School District is not in default of any of the provisions of the lease at the time that renewal is to be effective. The School District may exercise its right to renewal by giving notice thereof to the City. Such notice shall be in writing and shall be given by sending same to the City Manager at least 90 days prior to the date upon which the initial term of the lease, or any renewal term, is to expire.

Part IV - General Provisions.

1. Declaration of Default and Notice.

In the event that either party determines that the other has defaulted in the performance of its obligations hereunder, the aggrieved party may declare that default has occurred and give notice thereof to the defaulting party. Notice of default shall be given in writing, shall specify the nature of the default and the provision of the Agreement involved, and shall specify what action is required of the defaulting party to correct the default. The defaulting party shall have 30 days from the date of its receipt of the notice of default to correct the default. If at the end of said 30-day period the default has not, in the opinion of the aggrieved party, been corrected, that party may thereupon pursue its remedies as provided in paragraph 2 hereof.

2. Remedies Upon Default.

In the event of default by the School District in its obligation to make contributions to the costs of construction of the joint pool facility, as provided in Part II, paragraphs 6 and 9 hereof, or to make contributions

to the costs of operating and maintaining the joint pool facility, as provided in Part III, paragraph 5 hereof, or a default by the School District in the performance of any material provision of this Agreement, the City may, at its option, after declaring default and giving notice thereof, seek termination of this Agreement or specific performance of its provisions.

Unless this Agreement is terminated by agreement of the parties or pursuant to Court decree, the School District shall have the obligation to make contributions to the costs of operating and maintaining the joint pool facility during the entire term of this Agreement, regardless whether or not the School District continues to occupy and use the facility during the entire term, and the City shall be entitled to specific performance to enforce this provision.

In the event of default by the City in its obligation to operate and maintain the joint pool facility as provided in Part III hereof, the School District may, at its option, after declaring default and giving notice thereof, seek termination of this Agreement or specific performance of its provisions.

In order to obtain termination of this Agreement or specific performance of its provisions, the party seeking such relief shall, after expiration of the 30-day period following receipt of notice of default, commence a cause of action for such relief in Iowa District Court in and for Johnson County. The petitioning party may seek termination and specific performance as alternative forms of relief in the same cause of action. Nothing in this agreement shall be construed to require the petitioning party to elect its remedy at the time suit is filed, and the petitioning party shall, to the extent permitted by the Court, be allowed to amend its petition to seek other relief, or to seek alternative forms of relief.

3. Effect of Termination.

In the event that this lease is terminated as provided in paragraph 2 above, the School District's right to occupy and use the joint facility shall cease. The City shall thereafter have unencumbered ownership and use of the facility, subject only to the School District's right of entry as provided in Part I, paragraph 5.

4. Indemnity and Hold Harmless.

The School District hereby agrees to indemnify, defend, and hold harmless the City, its officers, agents, and employees, against any and all claims, suits, actions, debts, damages, costs, charges and expenses, including court costs and attorney's fees, and against all liability for property damage and personal injury, including death resulting directly or indirectly therefrom, arising from any act of negligence of the School District, either active or passive, or those of its agents, employees, assigns, or any other person acting on its behalf in supervising use of the joint pool facility and accompanying property by School District students, staff, personnel, or invitees pursuant to the terms of, and for the purposes specified in, this Agreement, or arising from School District supervision of any other use of the premises by the School District, its agents, employees, assigns, or any other person acting on its

behalf, or arising from the School District's supervision of any other activity which the School District sponsors, suffers or allows to occur on the property.

The City hereby agrees to indemnify, defend, and hold harmless the School District, its officers, agents, and employees, against any and all claims, suits, actions, debts, damages, costs, charges and expenses, including court costs and attorney's fees, and against all liability for property damage and personal injury, including death resulting directly or indirectly therefrom, arising from any act of negligence of the City, either active or passive, or those of its agents, employees, assigns, or any other person acting on its behalf in the design, construction, operation, maintenance, or general supervision of public use of the joint pool facility and accompanying property pursuant to the terms of, and for the purposes specified in, this Agreement, or arising from any other use of the premises by the City, its agents, employees, assigns or any other person acting on its behalf, or arising from any other activity which the City sponsors, suffers or allows to occur on the property.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed, effective as of the 1st day of March, 1987.

CITY OF IOWA CITY

William J. Ambrisco
William J. Ambrisco, Mayor

Attest: Marian K. Karr
Marian K. Karr, City Clerk

State of Iowa)
) SS:
Johnson County)

On this 24th day of February, 1987, before me, _____, a Notary Public in and for the State of Iowa, personally appeared William J. Ambrisco and Marian K. Karr, to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Iowa City, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Resolution No. _____ adopted by the City Council, under Roll Call No. _____ of the City Council on the 24th day of February, 1987, and that William J. Ambrisco and Marian K. Karr acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

Terrence L. Timmins
Notary Public in and for the State of Iowa

Received & Approved
By The Legal Department
Terrence L. Timmins 2/24/87



IOWA CITY COMMUNITY SCHOOL DISTRICT

By: Randy Jordison
Randy Jordison, President

State of Iowa)
) SS:
Johnson County)

On this 25th day of February, A.D. 1987, before me, John D. Cruise, a Notary Public in and for the State of Iowa, personally appeared Randy Jordison, to me personally known, and, who being by me duly sworn, did say that he is the President of the Board of Directors of the Iowa City Community School District; that the instrument was signed on behalf of the corporation, by authority of its Board of Directors, as contained in Resolution No. _____ adopted by the Board on the 25th day of February, 19 87, and that Randy Jordison acknowledged the execution of the instrument to be his voluntary act and deed and the voluntary act and deed of the Board, by it voluntarily executed.

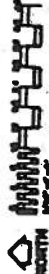
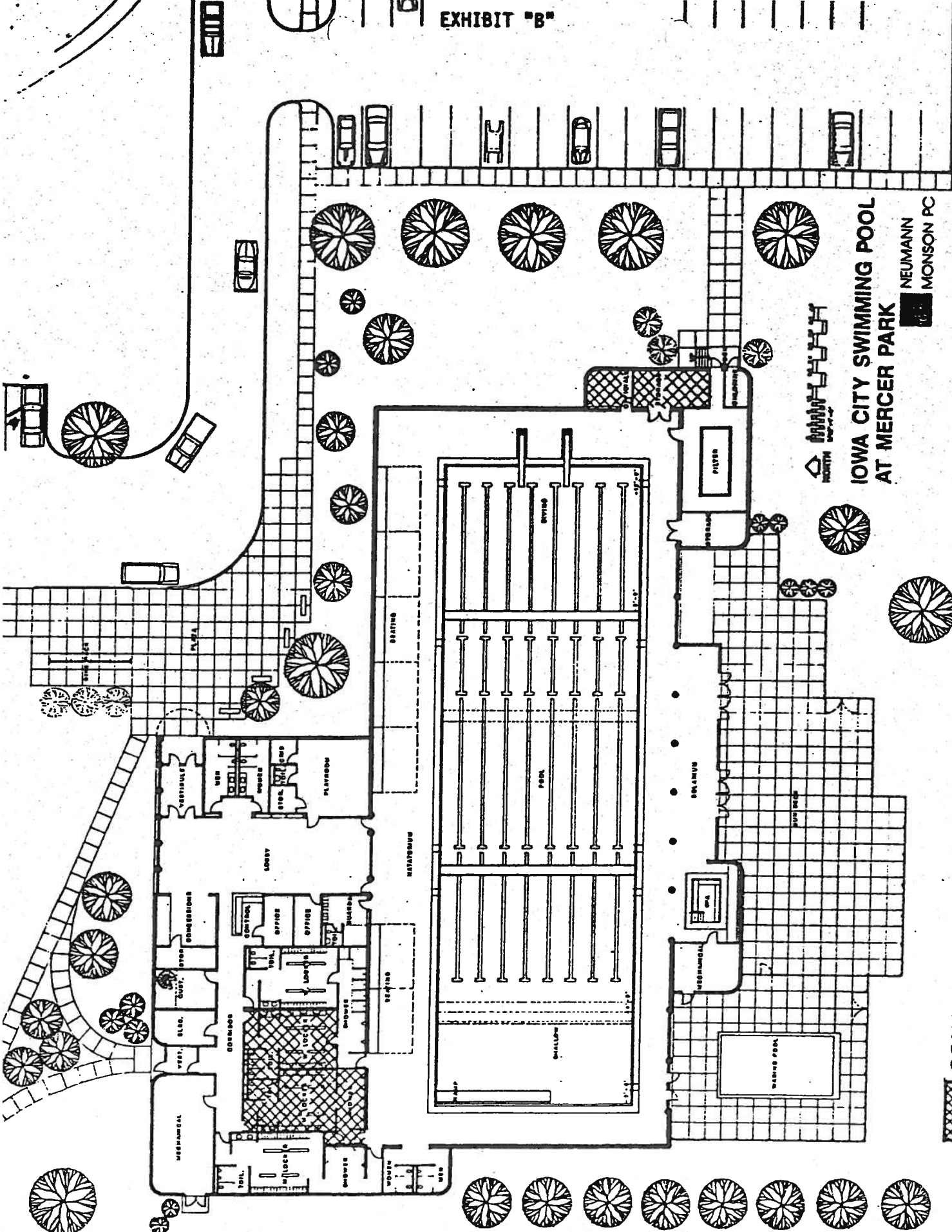


John D. Cruise
Notary Public in and for the State of Iowa

Exhibit A

Legal Description of Property to be Conveyed by Iowa City Community School District to City of Iowa City in Connection with the Joint Swimming Pool Project.

Commencing at the Southeast Corner of Lot 6 of Block 4 of Towncrest Addition Part I, to Iowa City, Iowa: Thence $S00^{\circ}37'00''W$; (A Recorded Bearing) 60.01 feet, to a Point on the Southerly Line of Bradford Drive, which is the Point of Beginning; Thence $S00^{\circ}37'00''$ 540.00 feet; Thence $N89^{\circ}23'00''W$, 275.00 feet; Thence $N00^{\circ}37'00''E$, 545.96 feet to a Point on said Southerly Line of Bradford Drive; Thence $S88^{\circ}08'30''E$, 275.06 feet, to the Point of Beginning. Said tract of land contains 3.43 acres, more or less, and is subject to easements and restrictions of Record.



**IOWA CITY SWIMMING POOL
AT MERCER PARK**

NEUMANN
MONSON PC

SCHOOL ASSIGNED SPACES

Exhibit C

Proposed First Year Budget
Joint Swimming Pool Facility

Budget
Code
Numbers

Full-Time Personnel (including FICA, IPERS
and insurance benefits):

6100	(*Supervisor (45% assigned to this facility - \$13,178 + 5% --- \$13,837*
6300	(
6400	(*Maintenance Worker - \$19,463 + 5% --- \$20,436*
6500	(

Part-Time/Temporary Personnel

		<u>Wages</u>	<u>Social Security</u>	<u>IPERS</u>	<u>Inflation</u>	<u>Total</u>
6100	(*Maintenance Workers	\$ 7,280	\$ 521	\$ 42	\$ 392---	\$ 8,235*
6300	(*Cashiers, Super- visors, etc.	\$17,472	\$ 1,249	\$100	\$ 941---	\$19,762 (50% = \$9,881)*
6400	(Lifeguards	\$49,990	\$3,574	\$287	\$2,693---	\$56,544
6500	(Instructors	\$ 6,005	\$ 429	\$ 35	\$ 323---	\$ 6,792
	(Aides	\$ 3,755	\$ 268	\$ 22	\$ 202---	\$ 4,247
	(Managers	\$ 8,148	\$ 583	\$ 47	\$ 439---	\$ 9,217

Building Operating Costs (based on averages):

7100	Office Supplies		\$ 238 + 5% -----	\$ 250
7200	*Operating Supplies Pool Chemicals and Miscellaneous Supplies		\$ 3,427 + 5% -----	\$ 3,598*
7300	Repair and Maintenance Supplies		\$ 286 + 5% -----	\$ 300
8100	Administrative Services (Bookkeeping, Accounting, Data Processing)		-----	\$ 0
8200	Communications (telephone) *Pay Telephone		\$ 950 + 5% -----	\$ 997 \$ 0*
8400	(*Property Insurance (fire & casualty) (*Liability Insurance	\$ 3,100 + 5% ----- \$12,877 + 5% -----		\$ 3,255* \$13,521*
8500	*Public Utility Services Gas and Electric Water and Sewer		----- \$ 3,325 + 5% -----	\$74,000* \$ 3,491*
8600	*Building Repair & Maintenance		\$ 2,600 + 5% -----	\$ 2,730*
9000	*Capital Repair and Maintenance		-----	\$ 0*

Exhibit C - Page Two (2)

*Indicates those items for which the School District will share costs (Cost Share Items).

Total dollar value all cost share items:	\$152,984.00
School District Estimated Share (30%):	x .30
School District Estimated Annual Contribution:	\$ 45,895.20
	÷ 12
School District Monthly Payment:	\$ 3,824.60

Exhibit D

Formula for Determining Actual Annual Percentages of Use

1. Hours and Percentage of Use Each School Day: Sept. 1-May 31.

Shared & Exclusive Hours of
Use Each Day as Per Pool
Use Schedule or Actual

Use Records	School District Use	City Use
6:00-9:00 = 3 hrs.	x 75% = 2.25 hrs.	x 25% = .75 hrs.
9:00-12:00 = 3 hrs.	x 50% = 1.50 hrs.	x 50% = 1.50 hrs.
12:00-1:00 = 1 hr.	x 0% = 0.00 hrs.	x 100% = 1.00 hrs.
1:00-6:00 = 5 hrs.	x 50% = 2.50 hrs.	x 50% = 2.50 hrs.
6:00-9:00 = 3 hrs.	x 0% = 0.00 hrs.	x 100% = 3.00 hrs.
Total & Respective Hours of Use Each School Day		
15 hrs./day	6.25 hrs./day	8.75 hrs./day

Percentage of Use Per School Day
 School District: $\frac{6.25}{15} = 41.66\%$
 City: $\frac{8.75}{15} = 58.33\%$

2. Total Hours of Operation Each Week.

Monday-Friday: 5 days at 15 hrs./day = 75 hrs.
 Saturday = 10 hrs.
 Sunday = 7 hrs.
 92 hrs./week

3. Total Hours of Operation Each Year.

Total hours of operation each year shall be the total hours per fiscal year that the pool is actually available for use, and shall not include down time for pool repair or maintenance or recognized City holidays when the pool is closed. It is assumed that the pool will be unavailable for use for these reasons for at least one week each year.

92 hours/week x 51 weeks = 4692 hours

4. Total Hours of Assigned School District Use Each Year. (based on Pool Use Schedule showing an assumed 180 days of use each year by School District)

180 days* x 6.25 hrs./day* = 1125 hours*
 Usage on weekends and non-school days 283 hours
 Total 1408 hours/year

*Number of days of use each year, number of hours of use each day and number of hours of use each year may vary. Actual figures to be established by reference to Pool Use Records.

5. Total Hours of Assigned City Use Each Year.

4692 hours - 1408 hrs. of School District use = 3284 hrs./year

Exhibit E

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That the Iowa City Community School District, Grantor herein, in consideration of the mutual covenants and agreements contained in a certain written Agreement found on record at Book _____, page _____, of the records of the Johnson County, Iowa, Recorder's Office does hereby Convey unto the City of Iowa City, Iowa, the following described real estate, situated in Johnson County, Iowa, to-wit:

There is hereby reserved to the Grantor a right of entry, pursuant to which the Grantor may, upon Grantee's abandonment of the use of the property for public swimming pool purposes for a period in excess of six months, seek writ of ejectment and upon issuance thereof enter and take possession of, and acquire title to, the property.

And the grantor does do Hereby Covenant with the said grantee, and successors in interest, that said grantor holds said real estate by title in fee simple; that it has good and lawful authority to sell and convey the same; that said premises are Free and Clear of all Liens and Encumbrances Whatsoever except as may be above stated; and said grantor Covenants to Warrant and Defend the said premises against the lawful claims of all persons whomsoever, except as may be above stated.

Words and phrases herein including acknowledgement hereof shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Signed this _____ day of _____, 19_____.

(Grantor's Address)