

A G R E E M E N T

CITY OF CORALVILLE - IOWA CITY COMMUNITY SCHOOL DISTRICT  
JOINT SWIMMING POOL PROJECT

THIS AGREEMENT is made by and between the City of Coralville, Iowa (hereinafter "City"), and the Iowa City Community School District (hereinafter "District").

I. PURPOSE. This Agreement will provide for the development, ownership, lease, management and operation of a joint swimming pool facility (hereinafter "facility"). On February 11, 1986, City and the District entered into a Memorandum of Agreement concerning this proposed facility, which Agreement is incorporated in this document by reference. This Agreement is made between the parties under the authority of Chapter 28E of the Code of Iowa and implements the terms, conditions and intentions of the parties as outlined in the Memorandum of Agreement.

The parties acknowledge that they have been jointly studying the feasibility of constructing a joint swimming pool facility to be located in the City of Coralville, Iowa; that plans and specifications for the facility have been prepared; that a site for the facility has been selected; that the City has had a special election held June 3, 1986 and obtained approval to issue general obligations bonds to fund its costs in the construction of the facility; and that the parties are now prepared to agree upon all other terms and conditions for the ownership and operation of said facility, all as contained in this Agreement.

II. JOINT EXERCISE OF POWERS UNDER CHAPTER 28E OF THE CODE OF IOWA.

A. The parties agree that the purpose of this Agreement is to jointly exercise their respective powers under Chapter 28E of The Code of Iowa to finance, develop, construct, own, operate, and manage a public improvement, to-wit: A swimming pool for the use of the public and the use of public school students.

B. The parties agree that this Agreement shall be effective upon its execution by both parties and that the duration shall be coterminous with the lease provisions contained herein. The lease shall be for an initial term of ten (10) years with guaranteed options for renewal as provided herein.

C. The parties agree that the Mayor of the City of Coralville shall be designated as the administrator for the purposes of this Agreement as provided by Section 28E.6 of The Code of Iowa. The Mayor shall administer the contract for the design and construction of the facility and shall administer the management and operation of the facility after completion of construction.

D. City and District agree that the development, construction, and equipping of the facility shall be jointly financed and that the operation and management of the facility shall be jointly funded.

E. City and District agree that the facility shall be constructed and located upon property owned by City immediately adjacent to City's Recreation Center located at 1506 8th Street, Coralville, Iowa. City shall be the owner of the facility. District's rights to use the facility shall be determined by this Agreement.

F. Construction of the facility will be the City's responsibility subject to the terms of this Agreement. District will have the right to approve the final plans for the facility and any substantial modifications of those final plans.

G. Upon termination of this Agreement or upon non-renewal, District's interest in the facility and its right to occupy and use the facility shall cease.

III. DEVELOPMENT AND CONSTRUCTION OF THE JOINT SWIMMING POOL FACILITY.

A. City will procure contracts for the design and construction of the facility incorporating the preliminary conceptual design prepared by Wehner, Pattschull and Pfiffner. City will select its own project architect and prepare final plans and specifications which will be submitted to District for 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 District, District will approve those plans and specifications by motion of its Board.

B. City agrees that after approval of plans and specifications, form of contract, and estimate of project cost pursuant to the requirements of The Code of Iowa, it will undertake to secure a bid or bids for the construction of the facility. City will have the sole responsibility for the competitive bid procurement and contract award process, which process will be conducted in conformance with Chapter 384 of The Code of Iowa.

C. City agrees 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 facility to be constructed as designed for an amount not exceeding the estimated costs thereof, \$1,508,000.00, as approved by City, (2) are from a responsible bidder or bidders acceptable to City, and (3) are responsive, complete, and in satisfactory form.

D. District agrees to designate and appoint a project representative to act on its behalf during the construction phase for purposes specified in this Agreement.

IV. FINANCING THE CONSTRUCTION OF THE JOINT SWIMMING POOL FACILITY.

A. The construction of the facility will be financed with a \$500,000.00 contribution from District and the balance payable by City.

B. District agrees to pay its share of the construction costs, namely \$500,000.00, in installments. The first installment of \$250,000.00 will be paid when construction contracts are awarded and construction has begun. The second and final installment of \$250,000.00 will be paid within fourteen (14) days of the completion of the facility and City's acceptance of the facility from the general contractor.

V. LEASE, MANAGEMENT AND OPERATION OF THE JOINT SWIMMING POOL FACILITY.

A. Premises and Term. In consideration of District's contribution of \$500,000.00 toward the cost of the construction of the facility, and in consideration of its on-going commitment contained herein, City hereby leases the facility to District for its use and benefit. District's right to occupy and use the facility shall commence at midnight on the day that City accepts the facility from its general contractor and shall terminate at midnight on the same date ten (10) years hence.

B. Possession and Use of Premises. District's right to occupy and use the leased premises is not exclusive. It is the intent of the parties that the pool is to be shared and jointly used by the public and by District pursuant to a "Pool Use Schedule" to be jointly developed and periodically updated by City and District representatives. The leased premises shall include office space, locker room, and storage space located on the premises.

C. Pool Use Schedule and Hours of Operation. The parties will develop a "Pool Use Schedule" prior to the

commencement of the term of this lease. The Pool Use Schedule will be updated by June 1st of each year for the next fiscal year beginning July 1st. The Pool Use Schedule will identify the hours during which the pool, or any portion thereof, is to be used by 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 District shall be considered to be use of the facility by District. Use of the facility for competitive swimming events between Iowa City public school students and students of other school systems shall be considered District use. All other uses of the pool shall be considered City use. This Pool Use Schedule may be amended by the parties from time to time as program needs and exigencies require.

If the pool is ever used simultaneously, the Pool Use Schedule will indicate the percentage of pool area to be used by each for purposes of apportioning costs of operation and maintenance. The facility will be available for use by the District for a period of not less than thirty percent (30%) of its total annual operating hours. District may use the facility more than thirty percent (30%) of its total annual operating hours by mutual agreement of the parties as reflected in the Pool Use Schedule.

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. City shall provide such records to District on a monthly basis. The records shall be deemed approved by District if not objected to within twenty (20) days of receipt.

D. Operation and Maintenance. City shall have the responsibility and the exclusive authority for the operation and maintenance of the facility. 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 facility during normal operating hours, and shall have responsibility to provide life guards to supervise the public use of the pool during periods of exclusive City use or shared use with District, if any.

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

District will have the responsibility to provide appropriate personnel to supervise use of the facility by its students and staff during periods of District use.

E. Budget and Cost Sharing. On or before January 15th of each year, City will cause to be prepared a preliminary fiscal year line item budget for the operation and maintenance of the facility for the next succeeding fiscal year, and shall cause said budget to be submitted to District for its consideration in preparation of its budget for the next succeeding fiscal year. The final budget for the facility as approved by City shall be submitted to District on or before March 1st. City will consult with District regarding any changes between the preliminary and final budget. The budget will reflect estimated expenses for operation and maintenance of the facility in the expense category shown on the proposed first year budget for the facility, Exhibit "A" hereto.

The parties will annually budget and contribute monies during the term of this Agreement to defray the expense of operating and maintaining the facility. The City will have the 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. 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 City to defray the City's costs and expenses in operating and maintaining the facility, which contributions shall be considered to be rental and to constitute consideration for its continued use and occupancy of the facility. District agrees that it shall be obligated to contribute annually during each fiscal year, as its share of the expenses, known as "cost share items", an amount equal to its actual annual percentage use of the pool, or thirty percent (30%) of the cost share items identified in the adopted budget for the facility, whichever is greater. However, notwithstanding the above, for the first year only, District agrees to pay one-half of the cost share items or a percentage contribution equal to its actual percentage usage, whichever is greater. For purposes of this provision, 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 "A", and the actual annual percentages of pool usage shall be calculated as shown in Exhibit "B" hereto.

District agrees to pay its annual fiscal year contribution in twelve (12) equal monthly payments, each monthly payment equal to one-twelfth (1/12) of thirty percent (30%) (fifty percent (50%) during the first year) 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 first of each month. Payments will be prorated at the beginning and end of the term of the lease.

During the first fiscal year of pool use, the respective cost shares of the parties, and the District's monthly payments shall be calculated on the basis of the proposed first year budget, Exhibit "A" hereto. District's first monthly payment shall be paid in advance of District's use and occupancy of the leased premises.

City agrees that at the close of each fiscal year it will prepare a reconciliation report and forward the report to District on or before August 31 of each year. The report will reflect actual costs and expenses for all budgeted line items in the budget for the facility for the preceding fiscal year and actual costs and expenses for cost share items in said budget. The report will also set forth City's and 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 parties' percentage of pool usage for the preceding fiscal year, which percentages shall be calculated by dividing each parties' 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 District's final payment, which figures shall be calculated by applying District's actual annual percentage of pool usage for that fiscal year to the actual cost and expenditures for cost share items for that year, as reflected in the report, less the total amount of District's monthly payments already paid for that year. If District's actual annual percentage of pool usage for that fiscal year is less than thirty percent (30%), thirty percent (30%) will be used as the actual annual percentage figure for that fiscal year, except for the first year of operation when District's minimum contribution will be fifty percent (50%).

In the event that City's actual expenses for cost share items for operation and maintenance of the facility are less than what was budgeted, and if, after applying the District's annual use percentage to said actual expenses for cost share items, it is determined that the District has paid monthly payments for said fiscal year which are in excess of the amount it should have paid, then, in that event, the overpayment shall be reflected in the reconciliation report and a refund made to the District within thirty (30) days of the report.

District will either approve or object to the reconciliation report within twenty (20) days of receipt thereof. The report will be deemed to be approved by District if not objected to within the twenty (20) day period.

F. Assignment and Sublease Prohibited. District's leasehold interest in the facility will not be assignable to any person or entity for any purpose. District will not have the right to sublease this facility even in only temporary instances.

G. Renewal. District will have the option to renew its lease of the facility for five (5) additional periods of five (5) years each upon the same terms and conditions as provided herein, provided that District is not in default of any of the material provisions of the lease at the time that renewal is to be effective. Renewal will be automatically effective for each option period unless District gives written notice to City of non-renewal at least 180 days prior to the date upon which the initial term of the lease, or any renewal term, is to expire.

#### VI. GENERAL PROVISIONS.

A. 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 thirty (30) days from the date of its receipt of the notice of default to correct the default. If at the end of said thirty day period the default has not, in the opinion of the aggrieved party, been corrected, that party may thereupon pursue its remedies as provided herein.

B. Remedies Upon Default. In the event of default by the District in its obligations to make contributions to the cost of construction of the facility as provided herein, or to make contributions to the costs of operating and maintaining the facility, or a default by the District in the performance of any material provision of this Agreement, City may, at its opinion, 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, District shall have the obligation to make contributions to the costs of operating and maintaining the facility during the entire term of this

Agreement, regardless whether or not District continues to occupy and use the facility during the entire term, and City shall be entitled to specific performance to enforce this provision.

In the event of default by City in its obligation to operate and maintain the facility as provided herein, District may, at its option, after declaring default and giving notice thereof, seek termination of this Agreement or specific performance of its terms.

In order to obtain termination of this Agreement or specific performance of its provisions, the party seeking such relief shall, after expiration of the thirty day period following receipt of notice of default, commence a cause of action for such relief in the Johnson County District Court. 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.

C. Effect of Termination. In the event that this lease is terminated as provided above, District's right to occupy and use the facility shall cease. City shall thereafter have unencumbered ownership of the facility.

D. Indemnity and Hold Harmless. District hereby agrees to indemnify, defend and hold harmless 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 District, either active or passive, or those of its agents, employees, assigns, or any other persons acting on its behalf in supervising use the facility and accompanying property by District students, staff, personnel or invitees pursuant to the terms of, and for the purposes specified in, this agreement, or arising from District's supervision of any other use of the premises by the District, its agents, employees, assigns, or any other person acting on its behalf, or arising from the District's supervision of any other activity which the District sponsors, suffers or allows to occur on the property.

City agrees to indemnify, defend and hold harmless 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 persons acting on its behalf in the design, construction, operation, maintenance, or general supervision of public use of the 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.

E. Approval. For reference purposes this Agreement is dated this 2nd day of December, 1986. It has been approved as required by law by the City Council of the City of Coralville and the Board of Directors of the Iowa City Community School District on the dates as indicated below.

DATED: December 2, 1986  
CITY OF CORALVILLE  
BY: [Signature]  
Michael Kattchee, Mayor  
BY: [Signature]  
Arlys Hannam, City Clerk

IOWA CITY COMMUNITY SCHOOL DISTRICT  
DATED: December 2, 1986  
BY: [Signature]  
Randall W. Jordison, President  
BY: [Signature]  
Gerald L. Palmer, Secretary

STATE OF IOWA )  
                  ) SS:  
JOHNSON COUNTY )

On this 2<sup>nd</sup> day of December, 1986, before me, the undersigned, a Notary Public in and for the State of Iowa personally appeared Michael Kattchee and Arlys Hannam to me personally known, who, being by me duly sworn, did say that



PROPOSED  
INDOOR POOL BUDGET-COST SHARE ITEMS  
City of Coralville/Iowa City Community School District

WAGES, FICA & IPERS, HEALTH INSURANCE

Facility Manag./Rec. Asst. (.33 FTE)	\$ 7,973	
Pool & Custodial Services	<u>24,612</u>	
		\$32,585

OPERATIONS

Gas & Electric	\$30,208	
Water & Sewer	2,641	
Operating Supplies	1,000	
Chemicals	3,000	
Property Insurance	1,000	
Maintenance & Repairs	<u>5,000</u>	
		<u>\$42,849</u>
Total Cost Share Items:		\$75,434

NOTE: The above budget items are only the cost share items for the facility. Additional costs for the facility are provided for and paid separately by the City.

FORMULA FOR ACTUAL POOL FACILITY USE

1. Hours and Percentages of Use on School Days  
(School calendar year)

15 hours per day - 8 hrs public use = City 53.33%  
7 hrs school use = School 46.67%

6:30 AM - 8:30 AM	2 hrs	City
8:30 AM - 11:30 AM	3 hrs	School
11:30 AM - 1:30 PM	2 hrs	City
1:30 PM - 3:30 PM	2 hrs	School
3:30 PM - 5:30 PM	2 hrs	School
5:30 PM - 9:30 PM	4 hrs	City

2. Weekly Hours of Operation

M-F	75 hours
Sat	13 hours
Sun	12 hours
	<u>100 hours</u>

3. Total Hours of Operation Per Year

100 x 51 = 5100

4. School District Use Each Year (hours)

180 days x 7 hrs day = 1260 hours  
Weekends & non-school = 212 hours  
(90 days x 2 hrs = 180)  
( 8 meets x 4 hrs = 32)

5. City Use Each Year (hours)

5100 hrs - school hrs 1472 = 3628 hrs year

6. Respective Annual Percentage of Use

School District	1472/5100	=	28.86%
City	3628/5100	=	71.14%