

**LEASE AGREEMENT BETWEEN THE TUKWILA SCHOOL DISTRICT
AND THE TUKWILA POOL METROPOLITAN PARK DISTRICT**

THIS LEASE AGREEMENT (“Lease”) is entered into by and between the Tukwila School District, a Washington municipal corporation (“School District”), and the Tukwila Pool Metropolitan Park District, a Washington municipal corporation (“TPMPD”).

WHEREAS, the School District owns that certain parcel of land (“Property”) located in the City of Tukwila, King County, Washington, described in Exhibit A to this Lease; and

WHEREAS, since 1971 the School District has leased said Property, initially to King County and then to the City of Tukwila beginning in 2003, for the construction and operation of a public pool currently known as the City of Tukwila (“Pool”); and

WHEREAS, the 1971 lease was for a term of forty (40) years, expiring in September 2011; and

WHEREAS, the residents of the City of Tukwila recently voted to form the TPMPD to preserve the Pool as a community facility for the use and benefit of the entire Tukwila community; and

WHEREAS, the School District desires, as its resources may allow, to offer aquatics athletic programs and aquatics education to its students and staff, and does not possess or operate a swimming pool in any of its other facilities; and

WHEREAS, TPMPD and the School District wish to enter into this new Lease Agreement to preserve the School District’s ability to provide aquatics programs, and to continue to offer this valuable recreational resource to the Tuwila community;

NOW, THEREFORE, in consideration of the foregoing recitals, of mutal promises of the School District and TPMPD, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the School District and TPMPD agree as follows:

1. PROPERTY

1.1 Property. The School District hereby leases to TPMPD, and TPMPD leases from the School District, the certain real property as described in Exhibit A attached hereto (the “Property”). In addition to the Property, the School District shall provide all convenient and necessary easements for utilities, ingress and egress.

1.2 Parking. The School District shall allow staff and patrons of the Pool to park in the Foster High School parking lot (“Parking Lot”) during Pool hours, provided that such use of the Parking Lot does not unreasonably interfere with School District operations. In the event

a Pool patron or staff member causes damage to the Parking Lot, the School District may request TPMPD to repair the damage solely caused by the Pool patron or staff member. For the purposes of this provision, “damage” shall mean documented physical damage to the Parking Lot, beyond normal wear and tear, directly attributed to the sole actions of a Pool patron or staff member. The School District bears the burden of documenting and attributing said damage.

2. TERM

2.1 Term. This Lease shall be for a term of twenty years (two hundred forty (240) months) and “Year” shall commence on September 14, 2011. The first “Lease Year” shall commence on the Commencement Date and shall end on the date that is twelve (12) months from the end of the month in which the Commencement Date occurs. Each successive Lease Year during the initial Term and any extension terms shall be twelve (12) months, commencing on the first day following the end of the preceding Lease Year. The Parties may mutually agree to extend the term of this Lease for two (2) terms of five (5) years each. Prior to and as a condition of any extension, the Total Rent shall be negotiated by the Parties in good faith.

2.2 Right to Recapture. The School District reserves the right to terminate this Lease and recapture the Property if an increase in student enrollment results in a need to construct new school facilities on the Property. Prior to exercising the right of recapture, the School District shall in due diligence explore alternative means of handling the enrollment increase other than recapturing the Property. In the exercise of due diligence, the School District shall research the real estate market to see if properties that would meet the School District’s needs are available for purchase, investigate whether any of the School District’s existing properties could be utilized to handle the increase in enrollment, and inquire with TPMPD to see if TPMPD can suggest any solutions. In the event the School District finds, after the exercise of due diligence and in its sole discretion, that it needs the Property for School District purposes prior to the expiration of this Lease and that no alternative solutions are practical or economically feasible, the School District shall provide TPMPD with advance written notice as follows:

2.2.1 During the 3rd through 5th year of this Lease, the School District shall provide at least twelve (12) years notice prior to terminating the Lease.

2.2.2 During the 6th through 8th year of this Lease, the School District shall provide at least nine (9) years notice prior to terminating the Lease.

2.2.3 During the 9th through 11th year of this Lease, the School District shall provide at least six (6) years notice prior to terminating the Lease.

2.2.4 During the 12th through 15th year of this Lease, the School District shall provide at least four (4) years notice prior to terminating the Lease.

2.2.5 During the 16th through 17th year of this Lease, the School District shall provide at least two (2) years notice prior to terminating the Lease.

The School District shall not exercise this right of recapture within the first two (2) years of the Lease term.

3. USE

TPMPD shall use the Property for use and operation of the Pool and shall not use or permit the Property to be used for any other purpose. As further consideration for this Lease, TPMPD agrees to enter into a Pool Use Agreement with the School District within six (6) months of receiving a request from the School District to enter into negotiations. The terms of the Pool Use Agreement shall consider the School District's use of the Pool for its aquatics education and athletic programs on terms that are beneficial to the School District, financially feasible for the TPMPD, and reflect the spirit of this Lease as a cooperative endeavor.

4. TOTAL RENT

4.1 Base Rent. TPMPD will pay the School District the following annual Base Rent which will increase as follows:

Lease Years 1-5	\$10,950 / yr
Lease Years 6-10	\$11,497.50 / yr
Lease Years 11-15	\$12,072.38 / yr
Lease Years 16-20	\$12,675.99 / yr

4.2 Payment. Payment of the annual Base Rent must be made on or before the first (1st) day of each October.

4.3 Pool Utilities and Operating Costs. In addition to the Base Rent, TPMPD shall pay for all operating and maintenance costs associated with the Pool, including payment of City of Tukwila surface water fees for the Property. TPMPD shall maintain accounts for utilities, including water, sewer, solid waste disposal, electricity, and heat, and shall be solely responsible for paying all utility charges. The TPMPD shall be solely responsible for hiring, supervising, disciplining, and paying all Pool employees.

4.4 Maintenance of Property. The TPMPD shall keep the Property in good repair and shall remove or repair all vandalism, including graffiti, within forty-eight (48) hours of its occurrence.

5. RENOVATION OF POOL BUILDING

During the term of the Lease, the TPMPD shall have sole discretion to determine whether and how to renovate the Pool building. The TPMPD shall bear all responsibility, risk, and expense of such renovations, and shall defend, indemnify, and hold the School District harmless from all claims arising out of same. TPMPD shall have the right to close the Pool temporarily if necessary to complete renovations, but shall provide the School District with at least thirty (30) days advance notice of any closure. Other than temporary closure of the Pool, the TPMPD shall use a reasonable effort not to disrupt or impact School District operations during renovations.

6. COMPLIANCE WITH STATE WATER RECREATION FACILITIES REGULATIONS

The TPMPD shall bear sole responsibility, risk, and expense of complying with state regulations on water recreation facilities and inspections by state and local health officials.

7. WAIVER OF CLAIMS AND INDEMNIFICATION

7.1 Indemnity. TPMPD shall defend, indemnify, and hold harmless the School District, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of TPMPD's use of the Property, or from the conduct of TPMPD's business, or from any activity, work or thing done, permitted, or suffered by TPMPD in or about the Property, except only such injury or damage as shall have been occasioned by the sole negligence of the School District. In the event that any suit based upon such a claim, action, loss or damage is brought against the School District, the TPMPD shall defend the same at its sole cost and expense; provided, that the School District retains the right to participate in said suit if any principle of governmental or public law is involved, and if final judgment be rendered against the School District or its officers, agents, employees and elected officials, or any of them, or jointly against TPMPD and the School District and their respective officers, agents, employees and elected officials, or any of them, the TPMPD shall satisfy the same.

The foregoing indemnities shall survive the expiration or termination of the Lease.

7.2 Workers Compensation. The indemnification obligations contained in this Section shall not be limited by any worker's compensation, benefit or disability laws, and each indemnifying party hereby waives any immunity that said party may have under the Washington Industrial Insurance Act, Title 51 RCW, and similar worker's compensation, benefit or disability laws. THE SCHOOL DISTRICT AND TPMPD ACKNOWLEDGE BY THEIR EXECUTION OF THIS LEASE THAT EACH INDEMNIFICATION PROVISION OF THIS LEASE (INCLUDING, BUT NOT LIMITED TO, THOSE RELATING TO WORKER'S COMPENSATION BENEFITS AND LAWS) WAS SPECIFICALLY NEGOTIATED AND AGREED TO BY THE SCHOOL DISTRICT AND THE TPMPD.

8. INSURANCE

8.1 TPMPD's Insurance. Without limiting TPMPD's obligations and responsibilities, the TPMPD is required to maintain liability insurance and property insurance as described below. Such insurance shall be at TPMPD's own expense. Insurance policies required to be maintained by TPMPD shall provide that such policies are not subject to material alteration or cancellation except after at least thirty (30) days prior written notice to the School District, and shall be primary as to the School District. TPMPD shall provide the School District with copies of the insurance policies required herein and annual proof of coverage.

8.2 Liability Insurance. TPMPD must maintain adequate commercial general liability insurance on an occurrence basis in the minimum amounts of One Million Dollars (\$1,000,000) for property damage and in the minimum amounts of Two Million Dollars (\$2,000,000) (per individual) and Two Million Dollars (\$2,000,000) (per accident) for personal injuries. Such insurance must indemnify both the School District and TPMPD against any such claims, demands, losses, damages, liabilities and expenses, including contractual liability assumed under this Lease, and shall not include any non-standard exclusions. The School District shall be furnished with a copy of such policy(ies) and proof of coverage. Such policy(ies) shall bear an endorsement that the same shall not be canceled except upon ten (10) days prior written notice to the School District.

8.3 Worker's Compensation. TPMPD shall at all times during the term of this Lease comply with the worker's compensation and employment liability laws of the state in which the Property is located. In addition, TPMPD shall at all times during the term of this Lease, at its own expense, keep in full force and effect employer's liability coverage with a minimum of One Million Dollars (\$1,000,000) for injury by disease of more than one person, and One Million Dollars (\$1,000,000) per employee for injury by disease.

8.4 Property Insurance. TPMPD shall maintain, including the payment of premiums for, a policy of property insurance covering loss or damage to the Property.

8.5 Waiver of Subrogation. Lessee and School District hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the premises or said building. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

8.6 Notices. TPMPD shall immediately furnish the School District with a copy of any written notice received, or a written summary of any oral notice received, from any governmental or quasi governmental authority, insurance company, inspection bureau or any other third party as it relates to the Property.

9. ASSIGNMENT

The rights, duties and obligations of either Party to this Lease may not be assigned to any third party without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

10. POOL

10.1 Ownership. TPMPD is the sole owner of the Pool and shall retain ownership of the Pool throughout the duration of this Lease. Should the School District terminate this Lease prior to or in non-conformance with the terms set forth in Section 2 of this Lease, ownership of the Pool shall revert to the School District and TPMPD shall incur no additional costs or liability for the operation, maintenance or demolition of the Pool.

10.2 Demolition. TPMPD agrees that upon request by the School District at the proper termination or expiration of this Lease, TPMPD will demolish the Pool at its sole expense within one (1) year of the termination/expiration of this Lease. TPMPD shall be solely responsible for bidding and managing the demolition of the Pool. Demolition shall include dismantling the Pool building, abating asbestos and any other hazardous materials in accordance with applicable regulations, removing all debris from the Property, and restoring the Property to even grade. Should the School District terminate this Lease prior to or in non-conformance with the terms set forth in Section 2 of this Lease, ownership of the Pool shall revert to the School District and TPMPD shall incur no additional costs of liability for the operation, maintenance or demolition of the Pool.

11. NOTICES

11.1 General Notice Requirement. Any notice, approval, consent or request required or permitted under this Lease shall not be effective unless in writing. Such notices shall be addressed to the person(s) entitled to notice, and shall be personally delivered or mailed to the address stated below by certified or registered mail, return receipt requested and postage pre-paid.

School District:

Superintendent
4640 S. 144th Street
Tukwila, WA 98168

TPMPD:

6200 Southcenter Blvd.
Tukwila, WA 98168

12. FINAL AGREEMENT – PROCEDURE TO AMEND

This is the final and a fully integrated agreement of the Parties and all prior statements, promises, representations and/or discussions between or among the Parties, whether or not in writing, are void if not set forth in this final agreement. All Parties represent and warrant to all other Parties that he/she/it does not and will not rely upon any oral or written prior statements, promises, representations and/or discussions not set forth herein and will never seek to prove or assert that there is any agreement or understanding that varies, adds to, or supplements this document. No modification or alteration of this agreement nor any waiver, excuse, release, forbearance or forgiveness of any duty, obligation or of liability of the TPMPD hereunder shall be valid or binding on the School District unless the same is in writing and signed by the School District.

13. DISPUTE RESOLUTION

The Parties shall endeavor to resolve any disputes arising under this Agreement through negotiations, with or without the help of a professional mediator. Should negotiations fail to produce a resolution, the Parties shall submit all disputes to binding arbitration. The Party prevailing in any dispute shall be entitled to reasonable attorney fees.

14. COUNTERPARTS

This Lease may be executed in counterparts.

LEASE AGREED TO THIS _____ DAY OF _____, 2011.

TUKWILA SCHOOL DISTRICT

**TUKWILA POOL METROPOLITAN
PARK DISTRICT**

By: Ethelda Burke
Its: Superintendent

By:
Its:

TUKWILA SCHOOL DISTRICT ACKNOWLEDGEMENT

State of Washington)
) ss.
County of King)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of the Tukwila School District to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

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

TUKWILA POOL METROPOLITAN PARK DISTRICT ACKNOWLEDGEMENT

State of Washington)
) ss.
 County of King)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of the Tukwila Pool Metropolitan Park District to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

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

LEGAL DESCRIPTION

KING COUNTY DEPARTMENT OF ASSESSMENTS PARCEL NO.: 152304-9106,
LOCATED AT 4414 SOUTH 144TH STREET, TUKWILA, 98168; W 190 FT OF E 565
FT OF S 320 FT OF SW 1/4 OF SE 1/4 LESS CO RD