

MEMORANDUM OF UNDERSTANDING BETWEEN THE PERRIS UNION HIGH SCHOOL DISTRICT AND THE CITY OF MENIFEE FOR USE OF THE PERRIS UNION HIGH SCHOOL DISTRICT AQUATICS FACILITIES

This MEMORANDUM OF UNDERSTANDING (“MOU”) is made and effective on the date it is mutually executed by both parties (“Effective Date”) by and between the City of Menifee, a California municipal corporation (“City”) and Perris Union High School District, a California school district (“District”). City and District may sometimes herein be referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

- I. **WHEREAS**, the District owns and operates high schools which serve students from within the City of Menifee; and
- II. **WHEREAS**, the District owns and operates Paloma Valley High School within the City of Menifee with surrounding aquatics facilities and equipment including: (1) available pool equipment (lifeguard towers, back boards, lane dividers, etc.), (2) space for City-provided storage container(s), as approved and made available by the District, (3) locker rooms, showers, and bathrooms, (4) AED and other safety equipment as required to provide programming, and (5) parking lot access (collectively, the “Aquatics Facility”) which is depicted in Exhibit A -“Map of Aquatics Facility,” which is attached hereto and incorporated herein; and
- III. **WHEREAS**, the District seeks to make the Aquatics Facility available to the surrounding community to promote public swim safety and recreation; and
- IV. **WHEREAS**, the City seeks to provide quality, low cost, aquatics programming options to the City’s community in a way that is accessible, beneficial, and enjoyable to residents; and
- V. **WHEREAS**, the District and the City desire to enter into this MOU to promote their respective goals and set forth the relative responsibilities of the Parties with regard to use of the Aquatics Facility; and
- VI. **WHEREAS**, the District and the City have discussed the potential for expanding this MOU to other aquatics facilities owned by the District at a future date, and intend for this MOU to provide a framework to facilitate such future expansion.

NOW, THEREFORE, it is mutually agreed between the Parties as follows:

Section 1. Term and Termination

- A. Term. The term of this MOU shall begin on the Effective Date and shall end on June 30, 2026 unless the term of this MOU is otherwise terminated or extended as provided in this MOU.
- B. Termination. Either Party may terminate this MOU upon ninety (90) days’ advance written notice to the other Party. Upon termination each Party shall deliver to the other Party all documents and materials, if any, prepared for that other Party up to the date of termination.

Section 2. Rights and Obligations of the Parties

A. Rights and Responsibilities of the City. Under this MOU, the City is responsible for the following:

- (1) **Staffing.** The City shall be responsible, at its own cost, for recruiting, selecting, training and employing suitable, properly trained and licensed/certificated staff needed to sufficiently supervise the City aquatics programs at the Aquatics Facility, including lifeguards, water safety instructors, and community service staff. All appointed candidates for employment for City aquatics programs at the Aquatics Facility must pass (1) a drug and alcohol screening, (2) a tuberculosis (TB) screening, and (3) background check prior to appointment. All water safety staff and lifeguards selected by the City must have completed, and remain in good standing with, all certifications required by the American Lifeguard Association or the American Red Cross as the national certifying agencies for lifeguards. The City will ensure that a sufficient number of water safety staff and lifeguards are supervising City aquatics programs at all times, as specified in the most recent American Red Cross Lifeguarding Manual. To the extent the District, in its reasonable discretion, becomes concerned about the suitability of staff or supervision for City programming and reasonably believes that the unsuitability could endanger the safety of persons or property, it may at any time suspend City use of the Aquatics Facility immediately, until assurances acceptable to District staff, in their reasonable discretion, can be made by the City satisfying District safety concerns.
- (2) **Emergency Action Plan.** The City will develop and adopt emergency action plan(s) for each facility including site maps and the specific location of necessary safety equipment. Maps and other information regarding the location and use of such equipment will be made available to the City upon request pursuant to Section B(4), below. To the extent the District, in its reasonable discretion, becomes concerned about the suitability of emergency action plans or other safety-related components of the City programming, and reasonably believes that the unsuitability could endanger the safety of persons or property, it may at any time suspend City use of the Aquatics Facility immediately, until assurances acceptable to District staff, in their reasonable discretion, can be made by the City satisfying District safety concerns. City shall notify the District as soon as practicable regarding an emergency at the Aquatics Facility.
- (3) **Programming.** The City shall have exclusive authority to provide programming at the Aquatics Facility during “City Usage Times” approved in advance by the District. By November 1st of each calendar year, the City shall provide a proposed schedule of programming to the District for review. Once finalized and approved by both Parties such schedules will be in effect the following summer season. To allow the City adequate time to

recruit and train aquatics staff, the District shall review and approve, or request modification to the proposed schedules by communicating with the City no later than December 1st of the same calendar year. The District shall confirm dates, times, and locations available for City's aquatic programming listed in the proposed schedules. This programming may include private and group swim lessons, public swim, and special programming. All programming will be hosted directly by City staff and will not include programs or activities hosted or facilitated by third-party organizations. All third party users that wish to use the Aquatics Facility shall book such uses directly with the District, and City agrees not to use its priority hereunder to circumvent the District's Civic Center Act procedures for third party use of the Aquatics Facility. All programs shall adhere to District pool use policies provided to the City hereunder, and all participants will be required by the City to follow industry standard safety procedures related to pool facility use.

- (4) **Program Fees.** The City shall set and collect participation fees for City programming at the Aquatics Facility, which shall be evaluated and adjusted on an annual basis as necessary to account for related City costs. These fees shall be established and adjusted in accordance with City fee policies, and shall not be determined through a market rate analysis, and not as a means of generating additional revenue for the City.
- (5) **City Facility Use Fee.** The City shall reimburse the District at a rate of fifteen dollars (\$15) for the Aquatics Facility per hour, of City programming at the Aquatics Facility ("City Facility Use Fee"). Requests for payment of the City Facility Use Fee shall be submitted by the District to the City for reimbursement within a reasonable time, and shall be payable within thirty (30) days of City receipt thereof. Portions of City Facility Use Fees reasonably in dispute may be withheld until resolution of the underlying dispute. The District and City agree to meet in good faith each year before December 1st, to confer regarding any necessary increases or other adjustments in the City Facility Use Fee, as may be necessary to account for increases in District's cost to maintain and operate the Aquatics Facilities.
- (6) **Maintenance, Repair, and Cleaning.** The City shall return the Aquatics Facilities and associated equipment to the District, after each use, in substantially the same state in which it is received, ordinary wear and tear excepted. Damages or discrepancies observed by District staff attributable to the City's use of Aquatics Facility under this MOU shall be reported to the City within a reasonable time, not to exceed sixty (60) days. The City shall review damage reports for appropriateness and shall reimburse the District for damages not reasonably in dispute within thirty (30) days of receipt of such reports. The City is not responsible for damages caused by the District's neglect or misuse or by natural disaster. The City will report any damage, needed repair, unsafe condition or maintenance issue to the

District upon discovery. The City will clean the Aquatics Facility after each use and will remove any trash generated by City programming use.

B. Rights and Responsibilities of the District. Under this MOU, the District is responsible for the following:

- (1) **Maintenance, Repair, and Cleaning.** Except as otherwise set forth hereunder the District agrees to provide all routine maintenance required for the Aquatics Facility. City staff will be provided with an on-call name and contact information for District staff that can respond to requests for emergency repairs occurring outside of the hours of 6:00 am to 2:30 pm on weekdays. The City, in its reasonable discretion, can review a necessary repair to determine whether City programming can occur safely notwithstanding the need for repair, and, may elect to either (1) contact District staff for an emergency repair, (2) operate the programming (if safe) notwithstanding the repair, or (3) postpone or cancel the City programming until the routine repair can be made during regular business hours. In the event the City requires an emergency repair, the District will charge the City direct labor and materials costs for repairs incurred outside of regular business hours. Labor and materials costs will not be charged to City for repairs made during regular business hours. Costs incurred for repair required during non-regular business hours shall be invoiced to the City for reimbursement within a reasonable period of time not to exceed sixty (60) days. Reimbursement requests shall be submitted by the District to the City, and amounts not reasonably in dispute shall be payable within thirty (30) days of City receipt thereof.
- (2) **Pool Use and Schedule, City Usage Times.** City programming uses, and the City Usage Times agreed between the Parties each year, in accordance with the process delineated in Section 2(A)(2) above, will have priority over other third party requests for use of the Aquatics Facility. City may request to schedule hours not already reserved for District use and in addition to the City Usage Times, for the District's written approval, which shall not be unreasonably withheld. All requests for pool use outside of set City Usage Times must will be submitted in writing to the District at least fourteen (14) days in advance for District approval which shall not be unreasonably withheld. The District may refuse approval of additional requested City use of the Aquatics Facility to the extent other uses have already been reserved for the Aquatics Facility before receipt of the City's fourteen (14) day request.
- (3) **Emergency or Repair Closures.** In the event the District in its reasonable discretion requires to close the Aquatics Facility due to reasons outside of the District's reasonable control, or for repairs which require such closure, the District shall notify the City as soon as practicable, and the City shall comply with the District's direction to cancel or postpone City programming. In the event of a closure under this Paragraph, no City

Facility Use Fee shall be due to the District for times when the Aquatics Facility is not available for the City's use. In the event of a closure under this Paragraph, the Parties shall meet and confer in good faith regarding rescheduling or relocation of the cancelled City programming.

- (4) **Facility Access.** The District will provide designated City staff with two (2) keys to access and secure the Aquatics Facility. City staff agrees to secure the Aquatics Facility, locking all required entrances and exits, and securing and storing all equipment properly after each City use. Should either of these keys be lost, the City shall immediately notify the District. The City shall be responsible for the costs associated with re-keying the related access points and any security that may be required until re-keying can be completed. City will limit its access to the other portions of any high school site contemplated in this MOU, and such access will be limited as reasonably possible to only the Aquatics Facility at each site. To that end, the route of entry and exit by City and City programming participants will to each facility will be limited to such access points that most directly lead to the Aquatics Facility, limiting access through classroom or other educational facilities where students may be located.
- (5) **Training Materials.** Concurrently with execution of this Agreement, and later upon City request, the District will provide currently existing operational usage videos, tutorials, inspection checklists and/or maps or diagrams of the location of facility-related equipment indicating information with regard to how the Aquatics Facility and its associated components should be properly used, stored and maintained. Whether or not the City requests or reviews such materials, the City is responsible for ensuring that the Aquatics Facility and its associated components are properly used and stored in accordance with applicable District training materials and standard industry practice, and will be responsible for any damage caused by a failure to so use, store and maintain.

- C. Standard of Performance. Each Party shall dedicate the time to performance of its obligations as may be reasonably necessary to perform such obligations to the standards observed by a competent practitioner in the geographic area where that Party is located, and to the reasonable satisfaction of the other Party.
- D. Cooperation and Noninterference. The Parties shall use best efforts to cooperate to accomplish the purposes of this MOU. Neither Party shall unreasonably interfere with the other Party's rights or obligations under this MOU. To the extent the rights and obligations hereunder involve performance of a specific or specialized activity or program, neither Party shall conduct competitive activities or programs at a time, in a location, or in a manner which may reasonably be expected to discourage participation in or otherwise detract from the activity or program conducted pursuant to the rights and obligations of the other Party.

- E. Personnel. If the rights and obligations hereunder involve the provision of personnel from one Party to another Party, the providing Party shall reasonably cooperate with requests from the other Party to reassign or replace such personnel as the same may be requested in that Party's discretion.
- F. Materials and Equipment. Except as otherwise stated in this MOU or in any exhibit hereto, each Party shall provide all materials, facilities, and equipment as may be necessary for that Party's performance hereunder, at that Party's sole cost and expense.
- G. Access to Aquatics Facility. Unless otherwise stated, the rights of use or access granted pursuant to this MOU shall apply to the officers, employees, subcontractors, agents, and volunteers of the applicable Party provided that such persons shall be subject to the terms and conditions of this MOU. City is only permitted to enter District property to the extent necessary to effectuate the performance of this MOU. City shall comply with all applicable security and safety procedures, protocols, and practices required by the District. Access to District facilities is not permitted unless otherwise approved in accordance with the procedures provided in this MOU. While three pool facilities are contemplated under this MOU, City access in any one year is limited to the Aquatics Facility for which a schedule with City Usage Times had been approved by the District pursuant to the procedures in this MOU.
- H. Compliance with Law. Each Party shall, at its sole expense, comply with all local, state, and federal laws and regulations applicable to the performance of this MOU, including obtaining and maintaining any required approval or permit necessary therefor. Section 4 shall specifically apply to Claims (defined therein) arising from a Party's noncompliance with any applicable law as the same may be amended from time to time. Each Party is independently responsible for reviewing and complying with all applicable laws.
- I. Documents and Records. Any plans, specifications, studies, drawings, estimates, test data, survey results, models, renderings, materials and other documents or works of authorship fixed in any tangible medium of expression (collectively "documents"), in electronic or any other form prepared by one Party for the other Party pursuant to this MOU shall be the property of the other Party upon termination or expiration of this MOU. Each Party shall maintain all documents prepared hereunder for the period required by law, or for three (3) years from the Effective Date, whichever is longer. Any documents hereunder shall be made available for inspection, audit, or copying during regular business hours upon request of the other Party's Contract Administrator(s). All matters under this MOU shall be handled for District by Candace Reines, Deputy Superintendent, Business Services ("District Contract Administrator"), and for City by Jonathan Nicks, Community Services Director ("City Contract Administrator".) Except as specified otherwise in this MOU, all correspondence shall be directed through the Contract Administrators identified herein, and neither Party shall take direction or orders for

the performance of this MOU from any person other than such Contract Administrators.

- J. Modifications to Facility. City shall make no modifications nor construct any improvements to the Aquatics Facility without written consent from the District, in its sole discretion.

Section 3. Independent Contractor Status

This MOU is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, employee, partnership, joint venture, or association. Neither Party shall have the authority to make any statements, representations, or commitments of any kind, or to take any action, which shall be binding on the other Party, without the prior written consent of such other Party. Neither Party shall be an employee of the other Party. Except as expressly provided herein, the means by which the Parties perform the rights and obligations set forth herein is within the exclusive direction and control of the performing Party. Neither Party shall ever represent that it or any of its officers, employees, or agents is in any manner officers, officials, employees, or agents of the other Party or have the power to incur any debt, obligation, or liability whatever against the other Party, or bind the other Party in any manner. Except as otherwise expressly provided by this MOU, neither Party shall pay salaries, wages, or any compensation to the other Party for performing the rights and obligations hereunder.

Section 4. Indemnification

A. To the fullest extent permitted by law, District shall defend and indemnify the City and any and all of its officials, officers, employees, volunteers, and agents (“City Indemnified Parties”) for from and against any and all claims, losses, costs, damages, expenses, liabilities, liens, actions, causes of action (whether in tort, contract, under statute, at law, in equity, or otherwise) (“Claims”) caused by the District’s performance of its obligations to maintain or repair the Aquatics Facility under this MOU. The provisions of this section do not apply to Claims occurring as a result of the City’s negligence or willful acts or omissions. The District’s obligations under this section shall survive termination of the MOU. The District shall, if requested by the City, defend the City Indemnified Parties using counsel approved by the City, from the approved panel of District JPA counsel, in its sole discretion. The City may instead elect to defend itself with the City Attorney’s office, or other counsel selected by City and reasonably approved by District and the District’s JPA in which case the indemnification obligations hereunder shall apply to the City’s attorney’s fees and cost in defending the Claims, which fees and costs must not exceed the JPA panel rates.

B. To the fullest extent permitted by law, City shall defend and indemnify the District and its officials, agents, volunteers and employees (“District Indemnified Parties”) for from and against any and all Claims caused by the City’s performance of this MOU, and/or the City’s use of the Aquatics Facility including the City programming at the Aquatics Facility. The provisions of this section do not apply to Claims occurring as a result of the District’s negligence or willful acts or omissions. The City shall, if requested by the District, defend the District Indemnified Parties using counsel approved by the District in its sole discretion. The City’s obligations under this section shall survive termination of the MOU.

Section 5. District Insurance

Prior to performing any right or obligation under this MOU, District, at its sole cost and expense, shall maintain in full force and effect at all times during the term of this MOU insurance as required by this Section.

A. Comprehensive Liability Insurance. Comprehensive liability insurance, including protective, completed operations and broad form contractual liability, property damage, and personal injury coverage. The limits of such coverage shall be at a minimum: (1) bodily injury including death, \$1,000,000 for each person and each occurrence and \$2,000,000 in the aggregate; and (2) property damage, \$1,000,000 for each occurrence and \$2,000,000 the aggregate. Comprehensive general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001. No endorsement shall be attached limiting the coverage. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

B. Workers' Compensation and Employer's Liability. The minimum limit of Workers' Compensation Insurance shall comply with the limits required by California law.

C. Quality of Insurance. All insurance required by this Section is to be placed with insurers with a Bests' rating of no less than A:VII and admitted in California. Alternatively, individual or group self-insurance may be accepted in writing in the sole discretion of the City.

D. Additional Insured. City, including its officers, employees, agents, and authorized volunteers, shall be named as an additional insured on the aforementioned insurance policies of District.

E. Proof of Insurance. District shall furnish the City with certificates of insurance, additional insured endorsements, or policy language granting the additional insured status required hereunder and completed certified copies of all policies and endorsements. The certificate of insurance must specifically reference this MOU, and must contain the signature of the person authorized to bind coverage on behalf of the District. The insurance provided to City as an additional insured must apply on a primary and non-contributory basis with respect to any insurance or self-insurance program maintained by City. Additional insured status shall continue for one (1) year after the expiration or termination of this MOU or completion of full performance hereunder, whichever is later. A certified endorsement must be attached to all policies stating that coverage is primary insurance with respect to City and its officers, officials, employees, and volunteers, and that no insurance or self-insurance maintained by City shall be called upon to contribute to a loss under the coverage. The City may request full copies of insurance policies upon reasonable notice to the District.

F. Notice of Changes. District shall provide written notice to City within ten (10) working days if (1) any of the required insurance policies are terminated; (2) the limits of any of the required policies are reduced, or (3) the deductible or self-insured retention on any of the required insurance policies is increased.

G. Self-Insured Retentions and Deductible. Should any of the insurance policies contain either a deductible or self-insured retention, the District shall be responsible to pay that deductible or self-insured retention and the City shall not be responsible to pay these costs.

H. Subcontractors. If any subcontractor is performing the rights and obligations of District hereunder, District shall ensure such subcontractors have coverage equal to that required of the District herein.

Section 6. City Insurance

Prior to performing any right or obligation under this MOU, City, at its sole cost and expense, shall maintain in full force and effect at all times during the term of this MOU insurance as required by this Section 6.

City shall obtain and maintain the policies of insurance or equivalent program of self-insurance with limits as shown below for the duration of this MOU. The insurance coverages and limits of liability shown are the minimum insurance requirements in this MOU. Should the City maintain insurance policies with broader coverage and limits of liability that exceed these minimum coverage and limits requirements those broader coverages and higher limits shall be deemed to apply for the benefit of the District and those coverages and limits shall become the required minimum limits of insurance and coverage in all sections of this Contract. All City coverage shall be primary to District coverage.

A. Comprehensive Liability Insurance. Coverage, including premises, operations, products and completed operations and contractual liability with limits not less than \$10,000,000 per occurrence, \$20,000,000 General Aggregate and \$10,000,000 Products-Completed Operations Aggregate for bodily injury, personal injury, and property damage. The Comprehensive Liability Coverage shall include the following endorsements:

- (i) The District, its Board, officers, agents and employees shall be included as Additional Insureds either by specific endorsement, CG 20 11 or CG 20 26, naming these parties or a blanket additional insured endorsement applicable “when required by written contract or contract”;
- (ii) A Waiver of Subrogation endorsement in favor of the District, its Board, officers, agents, volunteers and employees or a blanket waiver of subrogation endorsement applicable “when required by written contract or contract”;
- (iii) A Primary, Non-contributory endorsement in favor of the District, its Board, officers, agents, volunteers and employees or a blanket primary, non-contributory endorsement applicable “when required by written contract or contract”.

B. Workers’ Compensation and Employer’s Liability. The minimum limit of Workers’ Compensation Insurance shall comply with the limits required by California law. The Workers’ Compensation coverage shall include the following endorsements:

(i) A Waiver of Subrogation endorsement in favor of the District, its Board, officers, agents, volunteers and employees or a blanket waiver of subrogation endorsement applicable “when required by written contract or contract”;

C. Automobile Liability. Coverage with limits not less than \$10,000,000 per accident for bodily injury and property damage for all owned, hired and non-owned automobiles. Coverage shall include Contractual Liability. The Automobile Liability coverage shall include the following coverage or by endorsements:

(i) A Waiver of Subrogation endorsement in favor of the District, its Board, officers, agents and employees or a blanket waiver of subrogation endorsement applicable “when required by written contract or contract”;

(ii) A Primary, Non-contributory endorsement in favor of the District, its Board, officers, agents, volunteers and employees or a blanket primary, non-contributory endorsement applicable “when required by written contract or contract”.

D. Umbrella or Excess Liability. Coverage with limits not less than \$10,000,000 excess over the Commercial General Liability, Automobile Liability and Employer’s Liability.

a. The Umbrella or Excess Liability coverage shall include the following endorsements:

(i) All endorsements required under Sections A-C, above.

E. Molestation Coverage. City shall provide specific coverage for Abuse or Molestation with limits not less than \$10,000,000 per occurrence either by separate policy or by an endorsement to or coverage language in City’s Comprehensive Liability Insurance.

F. Notice of Changes. City shall provide written notice to District within ten (10) working days if (1) any of the required insurance policies are terminated; (2) the limits of any of the required policies are reduced, or (3) the deductible or self-insured retention on any of the required insurance policies is increased.

G. Self-Insured Retentions and Deductible. Should any of the insurance policies contain either a deductible or self-insured retention, the City shall be responsible to pay that deductible or self-insured retention and the District shall not be responsible to pay these costs. Notwithstanding the above, and this shall in no way alleviate City’s responsibility to pay such deductible or retention, nor limit, alter or amend the requirements that City shall to the fullest allowable by law, indemnify, defend and hold harmless the District, City shall ensure that all policies shall recognize the erosion of the retention or deductible from other sources.

H. Lower Retention. The District reserves all rights, including the right to require a lower retention than presented by the City. If such lower retention cannot be obtained in the market, then the District reserves the rights to inspect related financial statements of the City, and require

further financial guarantees or assurances if any information calls into question the City's ability to pay.

I. Quality of Insurance. All insurance policies as required in this section shall be written through insurance companies that are either admitted in the State of California or on the California Department of Insurance approved list of non-admitted insurers. All insurance companies shall have and maintain a minimum A. M. Best rating of A VII. Alternatively, individual or group self-insurance may be accepted in the sole discretion of the District.

J. Proof of Insurance. Certificates of Insurance Coverage shall be filed by City with the District evidencing all of the insurance coverages required in this section at the time this Contract is executed. The certificates must have all required endorsements attached or the Certificate will be rejected as non-compliant. Each successive year during the insurance requirement period shall be filed in the same manner. The failure to furnish such evidence upon ten (10) days written notice of such failure by District to City and opportunity to cure may be considered default by City. The District reserves the right to require complete, certified copies of all required insurance policies, upon reasonable request .

K. No Limit On Indemnity. Acceptance of any certificate of insurance or endorsement shall in no way limit any indemnity, hold harmless or defense obligation, nor specifically shall it limit any liability, or obligation.

L. Subcontractors. If any subcontractor is performing the rights and obligations of City hereunder, City shall ensure such subcontractors have coverage equal to that required of the City herein.

Section 7. Notices

All notices and other communications to be given by either Party must be in writing and may be effective by personal delivery, overnight courier, or first class or certified mail, return receipt requested and addressed to the appropriate Party as follows:

To City:	To District:
City of Menifee 29995 Evans Rd Menifee, CA 92586 Attn: Jonathan Nicks	Perris Union High School District 155 E. 4 th St Perris, CA 92584 Attn: Candace Reines
With a Copy to: City Clerk City of Menifee 29844 Haun Road Menifee, CA 92586	

Notice shall be deemed received on the date personally delivered or, if mailed, three (3) days after deposit in the mail. Notice provided by overnight delivery shall be deemed received on the next business day after delivery by the overnight delivery service. A Party may change its addressee by written notice to the other party at any time.

Section 8. Expansion to Other Aquatics Facilities

The Parties may expand this MOU to other aquatics facilities owned by the District, including but not limited to Heritage High School, by executing an amendment to this Agreement mutually acceptable to the Parties. Any future expansions of this MOU to include City use of other District-owned aquatics facilities will subject those facilities and the City use of such facilities to the same terms and conditions set forth herein. Deputy Superintendent, Business Services for the District and the City Manager or designee for the City are hereby authorized to administratively approve, administer, and execute the amendments contemplated by this Section.

Section 9. Remedies and Breach

- A. Cure Period. In the event of a default of the terms of this MOU by either Party, the non-defaulting Party shall give ten (10) days written notice and opportunity to cure (the “Cure Period”) to the defaulting Party, and, if the default remains uncured at the end of the Cure Period, may terminate this MOU and shall have any and all rights and remedies available at law or in equity to recover for the uncured default. The Parties may agree in writing to a longer or shorter Cure Period. If a default cannot reasonably be cured in the Cure Period or presents a substantial risk to the health and safety of either Party or the public, the non-defaulting Party may immediately terminate this MOU and seek any and all rights and remedies available at law or in equity.
- B. Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

Section 10. Subcontract and Assignment

Neither Party shall have the right to assign its right or obligations under this MOU without written consent of the other Party.

Section 11. Survival

All obligations arising prior to the expiration or termination of this MOU and all provisions of this MOU allocating liability between the Parties shall survive the expiration or termination of this MOU.

Section 12. Time

Time is of the essence in this Agreement and for the performance of this MOU.

Section 13. Applicable Law and Venue

This MOU shall be interpreted and enforced under the laws of the State of California. In the event that either Party brings any action against the other under this MOU, the Parties agree that trial of such action shall be vested exclusively in Riverside County.

Section 14. Attorneys' Fees

If any legal action is commenced between the Parties to this MOU, each Party shall bear its own costs of suit, including attorneys' fees.

Section 15. Severability

If any term, provision, covenant, or condition of this MOU shall be determined to be invalid, void, or unenforceable by a court of competent jurisdiction, the remainder of this MOU shall not be affected to the extent the remaining provisions are not rendered impractical to perform taking into consideration the purposes of this MOU.

Section 16. Waiver

The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

Section 17. Successors and Assigns

This MOU shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successor, and assigns.

Section 18. Captions

The captions, subtitles, and headings contained in this MOU are for convenience only and shall not in any way affect the meaning or interpretation hereof or serve as evidence of the interpretation hereof, or of the intention of the Parties hereto.

Section 19. Entire Agreement, and Construction

This MOU including the exhibits is the entire agreement of the Parties and supersedes all prior negotiations and agreements whether written or oral.

Section 20. Construction

The terms of this MOU shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this MOU or any other rule of construction which might otherwise apply.

Section 21. Incorporation of Exhibits

Each exhibit attached hereto is hereby incorporated herein by reference. References to this MOU shall include the exhibits.

Section 22. Amendments

This MOU may be amended only by written agreement and no purported oral amendment to this MOU shall be valid. The City Manager or his or her designee may execute and approve amendments to this MOU on behalf of the City which in the City Manager's reasonable discretion not substantially modify the terms and conditions of this MOU, provided, however, that the City Manager may instead require City Council for approval for any proposed amendment.

Section 23. No Third-Party Beneficiaries

There are no intended third-party beneficiaries under this MOU and no such third parties shall have any rights or obligations hereunder.

Section 24. Nondiscrimination

Each Party covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that in the performance of this MOU there shall be no discrimination against or segregation of, any person or group of persons on account of any impermissible classification including, but not limited to, race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry

Section 25. Nonliability of Employees

No officer, official, employee, agent, representative, or volunteer of either Party shall be personally liable to the other Party, or any successor in interest, in the event of any default or breach by the first Party or for any amount which may become due to the other Party or to its successor, or for breach of any obligation of the terms of this MOU.

Section 26. No Undue Influence

Each Party declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the other Party in connection with the award, terms or implementation of this MOU, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of either Party shall receive compensation, directly or indirectly, from the other Party, or from any officer, employee, or agent of said other Party, in connection with this MOU.

Section 27. No Benefit to Arise to Employees

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or has responsibilities with respect to this MOU during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any agreement or sub-

agreement, or the proceeds thereof, for the rights and obligations performed hereunder. This Section shall apply to District if District is a public entity.

Section 28. Authority to Execute

The persons executing this MOU on behalf of each of the Parties hereto represent and warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this MOU on behalf of said Party, (iii) by so executing this MOU, such Party is formally bound to the provisions of this MOU, and (iv) that entering into this MOU does not violate any provision of any other agreement to which said Party is bound

Section 29. Counterparts

This MOU and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

[signatures on following page]

DRAFT

IN WITNESS WHEREOF, the Parties have executed this MOU as the Effective Date.

CITY

DISTRICT

City Manager

Candace Reines
Deputy Superintendent, Business Services

Attest:

Acting City Clerk

Approved as to Form:

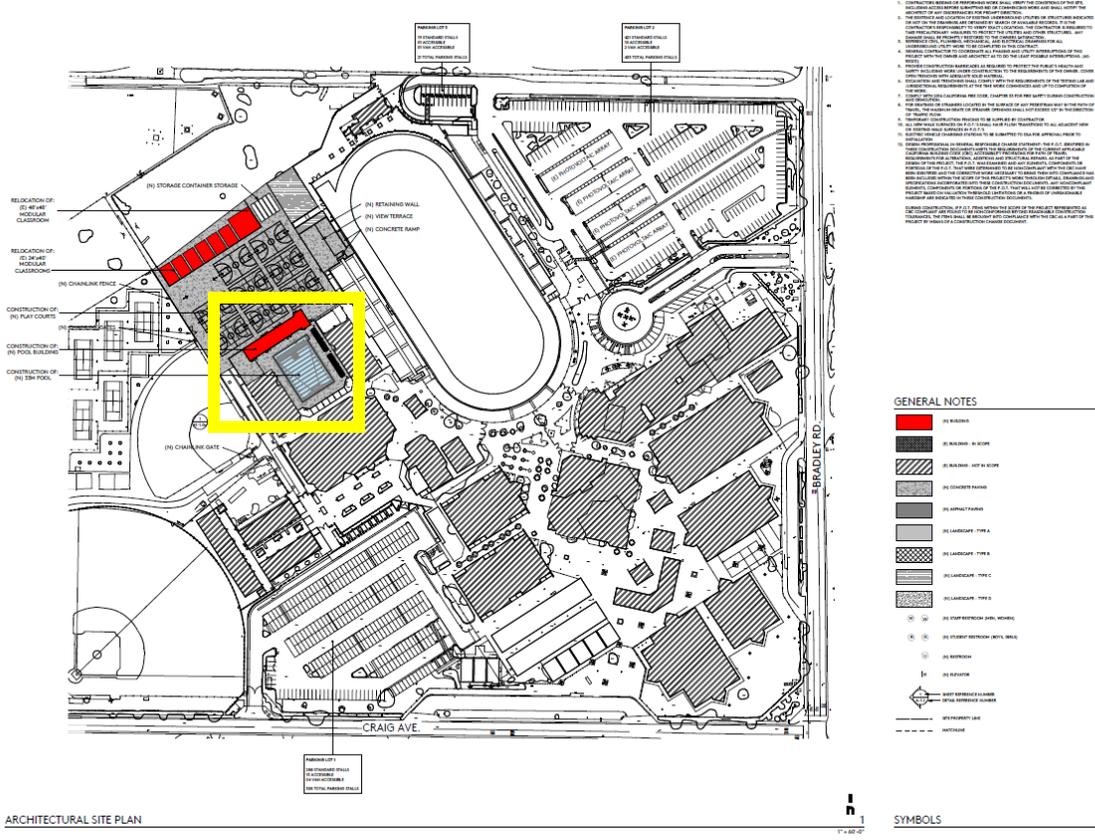
City Attorney

DRAFT

Exhibit A

Map of Aquatics Facility

Paloma Valley High School Aquatics Facility



628-5/6739991.1