The City Council, with certain statutory exceptions, can only take action upon properly posted and listed agenda items. Any writings or documents given to a majority of the City Council regarding any matter on this agenda that the City received after issuing the agenda packet, are available for public inspection in the City Clerk’s office during normal business hours. Such Documents may also be posted on the City's website at www.elsegundo.org and additional copies will be available at the City Council meeting.

Unless otherwise noted in the Agenda, the Public can only comment on City-related business that is within the jurisdiction of the City Council and/or items listed on the Agenda during the Public Communications portions of the Meeting. Additionally, the Public can comment on any Public Hearing item on the Agenda during the Public Hearing portion of such item. The time limit for comments is five (5) minutes per person.

Before speaking to the City Council, please come to the podium and state: Your name and residence and the organization you represent, if desired. Please respect the time limits.

Members of the Public may place items on the Agenda by submitting a Written Request to the City Clerk or City Manager’s Office at least six days prior to the City Council Meeting (by 2:00 p.m. the prior Tuesday). The request must include a brief general description of the business to be transacted or discussed at the meeting. Playing of video tapes or use of visual aids may be permitted during meetings if they are submitted to the City Clerk two (2) working days prior to the meeting and they do not exceed five (5) minutes in length.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact City Clerk, 524-2305. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

REGULAR MEETING OF THE EL SEGUNDO CITY COUNCIL
TUESDAY, May 21, 2013 - 7:00 P.M.

AGENDA REVISED TO ADD ITEM A1

7:00 P.M. SESSION

CALL TO ORDER

INVOCATION – Eric Jay, Pastor, St. John’s Lutheran Church

PLEDGE OF ALLEGIANCE – Mayor Pro Tem Fuentes
PRESENTATIONS

a. Proclamation – Elaine Allen, 2013 El Segundo Older American of the Year
b. Proclamation – SUPER CPR SATURDAY June 1, 2013
d. Presentation – Ellen Cunningham, Senior Librarian, Author Fair at the El Segundo Library Sunday, June 2, 2013 from 11:30 AM – 4:30 PM.
e. Presentation – Ron Melton, Resident, Residential Sound Insulation (RSI) Program

ROLL CALL

PUBLIC COMMUNICATIONS – (Related to City Business Only – 5 minute limit per person, 30 minute limit total) Individuals who have received value of $50 or more to communicate to the City Council on behalf of another, and employees speaking on behalf of their employer, must so identify themselves prior to addressing the City Council. Failure to do so shall be a misdemeanor and punishable by a fine of $250. While all comments are welcome, the Brown Act does not allow Council to take action on any item not on the agenda. The Council will respond to comments after Public Communications is closed.

A. PROCEDURAL MOTIONS

Consideration of a motion to read all ordinances and resolutions on the Agenda by title only.

Recommendation – Approval.

B. SPECIAL ORDERS OF BUSINESS (PUBLIC HEARING)

C. UNFINISHED BUSINESS

A1. Consideration and possible action to authorize the Mayor to execute a settlement agreement between the Wiseburn School District and the City of El Segundo related to the construction of a high school and joint use aquatics facility at 201 N. Douglas Street (Fiscal Impact: City will agree to operate the aquatics facility upon completion).

Recommendation – 1) Consider whether to authorize the Mayor to execute the draft settlement agreement; 2) Consider directing the City Manager, or designee, to cooperate with Wiseburn School District on the design of the facility and the drafting of a Joint Use Agreement (JUA) and return to City Council for a presentation of the design and consideration of the JUA; and 3) Alternatively, discuss and take other action related to this item.
D. REPORTS OF COMMITTEES, COMMISSIONS AND BOARDS

E. CONSENT AGENDA

All items listed are to be adopted by one motion without discussion and passed unanimously. If a call for discussion of an item is made, the item(s) will be considered individually under the next heading of business.

1. Warrant Numbers 2592490 to 2592670 on register No. 15 in the total amount of $1,058,106.95 and Wire Transfers from 4/26/13 through 5/09/13 in the total amount of $1,193,429.69.

   Recommendation – Approve Warrant Demand Register and authorize staff to release. Ratify Payroll and Employee Benefit checks; checks released early due to contracts or agreement; emergency disbursements and/or adjustments; and wire transfers.

2. Special City Council Meeting Minutes of April 23, 2013, Special City Council Meeting Minutes of April 30, 2013 and Regular City Council Meeting Minutes of May 7, 2013.

   Recommendation – Approval.

3. Consideration and possible action regarding approval of an agreement regarding the exchange of Federal Surface Transportation Program (STP-L) funds for Los Angeles County Metropolitan Transportation Authority (LACMTA) local funds. (Fiscal Impact: $243,458.00 receipt of grant funding)

   Recommendation – 1) Authorize the City Manager to sign an agreement, in a form approved by the City Attorney, between El Segundo and the Metropolitan Transportation Authority, for the exchange of Federal STP-L funds for LACMTA local funds; 2) Alternatively, discuss and take other possible action related to this item.

4. Consideration and possible action to award a standard Public Works Contract to West Coast Netting for Installation of Soccer Field Netting at Campus El Segundo Athletic Field. Project No.: PW 13-06 (Fiscal Impact: $17,375.00)

   Recommendation – 1) Authorize the City Manager to execute a standard Public Works Contract in a form approved by the City Attorney with West Coast Netting in the amount of $13,900.00; 2) Alternatively, discuss and take other possible action related to this item.
5. Consideration and possible action to vacate an existing sewer easement currently located at 1916 East Imperial Highway within the City of El Segundo.  
(Fiscal Impact: $0)  
Recommendation – 1) Adopt a resolution vacating a sewer easement on real property owned by the Boeing Company; 2) Alternatively, discuss and take other possible action related to this item.

6. Consideration and possible action to authorize the City Manager to execute a fifth amendment extending Agreement No. 3484, in a form approved by the City Attorney, between El Segundo and Fireworks & Stage FX America Inc. to provide a public fireworks show for the 2013 Fourth of July Community Celebration.  
(Fiscal Impact: Not-to-Exceed $23,000.00 from Special Events Trust Account and Special Events Contractual Services)  
Recommendation – 1) Authorize the City Manager to execute a fifth amendment extending Agreement No. 3484, in a form approved by the City Attorney; 2) Alternatively, discuss and take other possible action related to this item.

7. Consideration and possible action to award a standard Public Works Contract to J. Cab & Sons for City Hall Roof Replacement and to reject all bids for the Park Vista Senior Housing Facility Roof Replacement.  
Project No.: PW 13-05  
(Fiscal Impact: $378,350.00)  
Recommendation – 1) Authorize the City Manager to execute a standard Public Works Contract, in a form approved by the City Attorney, with J. Cab & Sons Roofing in the amount of $329,000.00; 2) Reject all bids for the Park Vista Senior Housing Roof Replacement; 3) Alternatively, discuss and take other possible action related to this item.

8. Consideration and possible regarding a request for an Administrative Use Permit to expand the on-site sale and consumption of beer, wine and alcohol (Type 47 State of California Alcoholic Beverage Control License) at an existing restaurant. The restaurant, The Tavern on Main will expand into approximately 800 square-foot vacant portion of 119 Main Street located at 121-123 Main Street. Applicant: Kristian Krieger  
(Fiscal Impact: N/A)  
Recommendation – 1) Receive and file this report without objecting to the approval to allow the on-site sale and consumption of beer, wine and alcohol at an existing restaurant; 2) Alternatively, discuss and take other possible action related to this item.
9. Consideration and possible regarding a request for an Alcoholic Beverage Control (ABC) License to allow the on-site sale and consumption of beer and wine (Type 41 State of California Alcoholic Beverage Control License) at a new restaurant (PizzaRev) at 460 North Sepulveda Boulevard, Suite C. Applicant: Rodney Eckerman
(Fiscal Impact: N/A)
Recommendation – 1) Receive and file this report without objecting to the issuance of an alcohol license for on-site sale and consumption of beer and wine at a new restaurant at 460 North Sepulveda Boulevard, Suite C; 2) Alternatively, discuss and take other possible action related to this item.

10. Consideration and possible action regarding the acceptance of $36,940.00 in grant funding from the U.S. Department of Homeland Security, through the Grant Programs Directorate within the Federal Emergency Management Agency (FEMA), under the Fiscal Year 2012 Urban Areas Security Initiative (UASI 2012), to procure the $39,547.17 purchase of gas masks and class III protective suits for the Police Department.
(Fiscal Impact: $39,547.17)
Recommendation – 1) Authorize the acceptance of $36,940.00 in grand funds from the UASI 2012 grant program which will be used toward the $39,547.17 purchase of police protective gear; 2) Pursuant to El Segundo Municipal Code § 1-7-10, waive the bidding process and purchase of gas masks (the Avon C50), their corresponding filters, and class III protective suits (the Blauer XRT) in accordance with an existing contract with U.S. Communities (Contract Number 4400001839) and Mallory Safety and Supply, LLC using equipment replacement and Urban Areas Security Initiative (UASI) grant funds; 3) Authorize the City Manager to execute an agreement, in a form approved by the City Attorney, to purchase sixty-five (65) gas masks (the Avon C50), their corresponding filters, and class III protective suits (the Blauer XRT) from Mallory Safety and Supply, LLC, using equipment replacement and Urban Areas Security Initiative (UASI) grant funds; 4) Alternatively, discuss and take other possible action related to this item.

11. Consideration and possible action to authorize the City Manager to execute an agreement with AC Martin Partners, Inc. for Interior Architectural services for City Permit Center and Finance Office Tenant Improvements.
(Fiscal Impact: $36,000.00)
Recommendation – 1) Authorize the City Manager to execute an agreement with AC Martin Partners, Inc., as approved to form by the City Attorney, for Interior Architectural services not to exceed $36,000.00; 2) Alternatively, discuss and take other possible action related to this item.

12. Consideration and possible action to award a standard Public Works Contract to GMC Engineering, Inc. for construction of Maple Avenue Street Improvements project, and to award a Public Works Professional Services
Agreement to AKM Consulting Engineers for construction inspection services for the project. Project No.: PW 12-09
(Fiscal Impact: $2,035,500.00)
Recommendation – 1) Authorize the City Manager to execute a standard Public Works Contract, in a form approved by the City Attorney, with GMC Engineering, Inc. in the amount of $1,677,637.70; 2) Authorize the City Manager to execute a standard Public Works Professional Services Agreement in a form approved by the City Attorney with AKM Consulting Engineers in the amount of $92,694.00; 3) Alternatively, discuss and take other possible action related to this item.

13. Consideration and possible action to receive this report regarding the emergency repair of the wet well level monitoring sensor line in Pump Station #1.
(Fiscal Impact: $2,906.63)
Recommendation – 1) Receive and file this report regarding the emergency repair of the wet well level monitoring sensor in Pump #1; 2) Alternatively, discuss and take other possible action related to this item.

14. Consideration and possible action to receive and file this report regarding the emergency repair of Recreation Park field lighting.
(Fiscal Impact: $10,525.00)
Recommendation – 1) Receive and file this report regarding the emergency repair to the 480 Volt, 800 amp main breaker at Recreation Park; 2) Alternatively, discuss and take other possible action related to this item.

F. NEW BUSINESS

15. Consideration and possible action to update the El Segundo Municipal Code regulating general penalties and administrative citations. These changes are desirable to ensure effective code enforcement by the El Segundo Police, Fire, Public Works, and Planning and Building Safety Departments.
(Fiscal Impact: None)
Recommendation – 1) Introduce and waive first reading of an Ordinance amending Chapter 1-2 of the El Segundo Municipal Code regarding procedures for issuing infraction citations; 2) Introduce and waive the first reading of an Ordinance amending Sections 1-2A-1, 1-2A-2, 1-2A-3 1-2A9 and 1-2A10 of the El Segundo Municipal Code regarding administrative citations; 3) Schedule a second reading and adoption for both ordinances; 4) Alternatively, discuss and take other possible action related to this item.

G. REPORTS – CITY MANAGER
H. REPORTS – CITY ATTORNEY

I. REPORTS – CITY CLERK

J. REPORTS – CITY TREASURER

K. REPORTS – CITY COUNCIL MEMBERS
   Council Member Fellhauer -

   Council Member Atkinson –

   Council Member Fisher –

16. Consideration and possible action to change the current practice of electing a Mayor and Mayor Pro Tem for two-year terms and instead have these positions elected by Council on an annual basis.
   (Fiscal Impact: None)
   Recommendation – 1) Change the current City Council policy to conduct an annual election for Mayor and Mayor Pro Tem, direct staff to make any necessary changes to the Municipal Code and conduct Council election for Mayor and Mayor Pro Tem; 2) Alternatively, discuss and take other possible action related to this item.

17. Consideration and possible action to fill two vacant positions on the Economic Development Advisory Council (EDAC) with current City Council Members Bill Fisher and Dave Atkinson to provide a direct conduit to the entire City Council on economic development issues including funding recommendations and a long range economic development strategic plan.
   (Fiscal Impact: None)
   Recommendation – 1) Approve the appointments of Council Member’s Dave Atkinson and Bill Fisher to the Economic Development Advisory Council; 2) Alternatively, discuss and take other possible action related to this item.

Mayor Pro Tem Fuentes –

Mayor Jacobson –
PUBLIC COMMUNICATIONS – (Related to City Business Only – 5 minute limit per person, 30 minute limit total) Individuals who have receive value of $50 or more to communicate to the City Council on behalf of another, and employees speaking on behalf of their employer, must so identify themselves prior to addressing the City Council. Failure to do so shall be a misdemeanor and punishable by a fine of $250. While all comments are welcome, the Brown Act does not allow Council to take action on any item not on the agenda. The Council will respond to comments after Public Communications is closed.

MEMORIALS –

CLOSED SESSION

The City Council may move into a closed session pursuant to applicable law, including the Brown Act (Government Code Section §54960, et seq.) for the purposes of conferring with the City’s Real Property Negotiator; and/or conferring with the City Attorney on potential and/or existing litigation; and/or discussing matters covered under Government Code Section §54957 (Personnel); and/or conferring with the City’s Labor Negotiators.

REPORT OF ACTION TAKEN IN CLOSED SESSION (if required)

ADJOURNMENT

POSTED:

DATE: 7/14/13

TIME: 6:15 PM

NAME: [Signature]
AGENDA DESCRIPTION:

Consideration and possible action to authorize the Mayor to execute a settlement agreement between the Wiseburn School District and the City of El Segundo related to the construction of a high school and joint use aquatics facility at 201 N. Douglas Street (Fiscal Impact: City will agree to operate the aquatics facility upon completion).

RECOMMENDED COUNCIL ACTION:

1. Consider whether to authorize the Mayor to execute the draft settlement agreement;
2. Consider directing the City Manager, or designee, to cooperate with Wiseburn School District on the design of the facility and the drafting of a Joint Use Agreement (JUA) and return to City Council for a presentation of the design and consideration of the JUA; and
3. Alternatively, discuss and take other action related to this item.

ATTACHED SUPPORTING DOCUMENTS:

1. Draft settlement agreement (to be provided under separate cover)
2. Air photo of 201 N. Douglas Street
3. Site Plan of proposed aquatics facility

FISCAL IMPACT: TBD

Amount Budgeted:
Additional Appropriation:
Account Number(s):

PREPARED BY: Greg Carpenter, City Manager

REVIEWED BY:
APPROVED BY:

BACKGROUND & DISCUSSION:

Unlike El Segundo, which is a unified (kindergarten through 12th grade) school district, the Wiseburn area is served by two districts: Wiseburn School District (WSD) for grades K-8 and the Centinela Valley High School District (CVHSD) for grades 9-12. The Wiseburn School District has existed since 1896 and initially served a large portion of the South Bay. Over the years, Wiseburn has reduced its boundaries to address the incorporation of new cities and school districts. When El Segundo Unified School District (ESUSD) was established, the boundary between ESUSD and WSD/CVHSD was set at Sepulveda Boulevard. This placed the eastern half of the City’s jurisdiction outside of the ESUSD boundaries.

The Wiseburn School District has been taking steps since 2000 to become a Unified School District and expand its service from K-8th grade to K-12th grade, similar to ESUSD. As an interim measure, WSD established Da Vinci Charter High School in 2009. Unification has been a complex process. In November of this year, the Wiseburn residents will be asked to vote on unification and if the ballot measure is approved, unification could occur in July of 2014.
In preparation for unification, WSD has taken steps towards acquiring the funding and property for the construction of a new high school. The funding was secured through the passage of high school construction bond in November of 2010 that provides $87 million dollars in construction funding. In January of 2011, WSD informed the City of El Segundo that it intended to establish the new high school in the City of El Segundo with possible locations along Aviation Boulevard or on a portion of the vacant land located at Campus El Segundo.

Based on concerns about land use, fiscal impact and lost development opportunity, the City asked WSD to work cooperatively for finding a school location that was mutually satisfactory. A great deal of time and effort went into discussion of other sites, particularly the ability to utilize property in and around Del Aire Park. This location and the agreement proved to be problematic. In late 2012, WSD indicated that it was interested in constructing the high school at 201 N. Douglas Street. This is a 13.7-acre site improved with a 4-story, 355,000 Sq. ft. building that the Northrop Grumman Corporation vacated around January of 2013 (see attached air photo).

The District prepared a Draft Environmental Impact Report (EIR) and the City provided comments on areas of concern. The District took action to exempt its proposed school from the City’s zoning regulations pursuant to state law and certified a Final EIR on March 21, 2013. The District moved forward with the purchase of the property in late April 2013.

While the District took these actions, the City sought to resolve its concerns by negotiating with the District for construction of an Aquatics Center. A City Council subcommittee, comprised of Council Member Atkinson and Council Member Fisher was formed and the parties have been meeting for the past several months to reach agreement on a mutually beneficial resolution.

**PROPOSED JOINT USE AGREEMENT**

The Council Subcommittee and Wiseburn have negotiated a possible settlement agreement that would include the following basic terms:

**Wiseburn Obligations**

- **Aquatics facility** – Wiseburn agrees to improve 2 acres of its property with an aquatics facility (see attached site plan) consisting of a 50-meter competition pool, restrooms and locker facilities and aquatics facility parking lot and, if the budget allows, a smaller therapy pool.
- **Facility financial commitment** – Wiseburn agrees to commit $6,000,000 to the construction of the aquatics facility.
- **Joint Use Agreement** – Wiseburn and the City would negotiate a joint use agreement for use of the Aquatics Center to accommodate Wiseburn, ESUSD, and the general public. The City and Wiseburn also agree to explore joint use of the other athletic facilities at the proposed high school and the Campus El Segundo athletic fields.
- **Term of the Agreement** – the term of the agreement would be for 25 years with the City having the ability to extend the agreement for an additional 25 years.
- **Timing** – Wiseburn agrees to prepare a modification to its EIR and prepare plans for the aquatics facility in a timely manner. The intent is to have the facility complete in late 2015. If the pool is not complete by June of 2017, a liquidated damages payment of $1.5 million dollars would be paid to the City of El Segundo.
City of El Segundo Obligations

- **Dispute Resolution** – The City agrees to not dispute the EIR and not pursue and legal challenge related to the EIR or the purchase of the property.
- **Operations and Maintenance** – The City agrees to staff, operate and maintain the facility. While the intent would be to operate the facility throughout the term of the agreement, the city must, at a minimum, fully operate the facility for one year and operate it at a level that supports the school districts use for at least 5 years.
- **Grand Avenue Extension** – The City’s General Plan anticipates Grand Avenue to be extended through this site at some future date. The City agrees to not extend the street through the property for as long as the property is used for a high school.

**Summary**

The proposed agreement would resolve the dispute between the City and Wiseburn. More importantly, the settlement agreement would:

- Provide a new, competition and recreation oriented aquatics facility aquatics for area residents, in a venue large enough to support larger scale events,
- Provide an amenity for use by area employers and their employees and an additional tool in the City’s business attraction efforts,
- Provide for enhanced educational opportunities for Wiseburn students
- Allow for the Urho Saari Plunge to be closed for renovations and reopened with additional community programming
- Allow access to additional athletic facilities (soccer, softball etc.)

For these reasons, it is recommended the City Council consider authorizing the Mayor to execute the draft settlement agreement. In addition, the City Council should consider directing the City Manager to undertake negotiating and drafting the joint use agreement anticipated in the settlement agreement.
SETTLEMENT AGREEMENT BETWEEN
THE WISEBURN SCHOOL DISTRICT AND
THE CITY OF EL SEGUNDO

This Agreement ("Agreement") is made and entered into this ___ day of May, 2013 by
and between the Wiseburn School District, a school district organized in accordance with the
California Education Code ("District") and the City of El Segundo, a general law city and
municipal corporation ("City"). These parties may also be referred to in this Agreement
individually as a "Party" and collectively as "Parties."

1. RECITALS. This Agreement is entered into with reference to the following facts and
objectives:

A. District’s boundaries overlap with City’s jurisdictional boundaries.

B. District is currently relocating its two charter high schools, Da Vinci Design and
Da Vinci Science (the "High School") to a permanent location.

C. District determined that the preferred location for the new high school was the
13.7 acre site located at 201 N. Douglas within City’s jurisdiction (the
"Property"). The Property is developed with a 335,000 square foot, 4-story,
building that is currently vacant.

D. On or about September 13, 2012, District entered into a purchase and sale
agreement with CDC Mar Douglas, LLC for the Property, which Agreement
required compliance with the California Environmental Quality Act ("CEQA")
before consummation of the Property sale.

E. The project for the High School was defined to include: demolition of
approximately 90,000 to 170,000 square feet of the existing building along the
east elevation; 54 classrooms for an anticipated enrollment of 1,200 students,
media center library, student union/multipurpose cafeteria, gymnasium, 400 seat
theater, student services/administration, 12,000 square feet of District office space
for 20 staff persons, six basketball courts, six tennis courts, and synthetic athletic
fields for soccer and baseball/softball all as more fully set forth in the final
environmental impact report described below (the "Project").

F. District hired the Planning Center to prepare the necessary environmental
assessment for the Project. A Notice of Preparation was prepared in September
2012. Public review of the Initial Study and Notice of Preparation occurred
between September 18, 2012, and October 17, 2012.

G. On October 26, 2012, City’s City Attorney sent a letter to District’s
Superintendent alleging, among other things, that District’s approval of the
Purchase and Sale Agreement violated CEQA.

H. A draft environmental impact report ("DEIR") was prepared for the Project.
Public review of the DEIR occurred between January 11, 2013 and February 25,
2013. The DEIR concluded that there would not be any significant impacts that
could not be mitigated below a level of significance.

I. The DEIR concluded that although Grand Avenue is shown in the El Segundo
General Plan’s Circulation Element to extend through the Property, the Project
conformed with the General Plan because that portion of the Property was not
being developed with any buildings and the road could still be constructed if
required.

J. On February 25, 2013, City of El Segundo filed a comment letter regarding
District’s Draft EIR raising numerous objections.

K. On March 21, 2013, City of El Segundo filed another comment letter regarding
the DEIR, the final EIR ("FEIR") and District’s response to City’s February 25,
2013 comment letter.

L. With the exception of the March 21, 2013 City letter, District believes it
adequately responded to all comments that were received on the DEIR in writing
and the responses are incorporated into the FEIR. To the extent that City’s March
21, 2013 letter raised new issues, the District believes these were addressed at District’s hearing on March 21, 2013.

M. On March 21, 2013, the District Board of Trustees ("District Board") certified a final EIR ("FEIR") and approved the construction of the Project. Additionally, the District Board exempted District from City’s zoning regulations in accordance with Government Code § 53094 since schools are not a specifically allowed use in the Urban Mixed-Use North zone, as identified by the El Segundo Municipal Code ("ESMC"), in which the Project is located. In accordance with the Purchase and Sale Agreement and as authorized by Resolution No. 12/13.27 adopted by the District Board March 21, 2013, the purchase of the Property was consummated. The City disputes the adequacy of the FEIR based upon the issues raised in the various communications prepared by the City and its attorneys as detailed above.

N. During District’s search for a site for the High School, and through the review period, City has expressed concerns about the 13.7 acre site.

O. Subcommittees of City’s City Council and the District Board have met during the last few months in an effort to try to resolve City’s concerns.

P. For purposes of this Agreement, the City’s contentions regarding CEQA, including the FEIR and other concerns expressed during the subcommittee meetings and the issues raised in its correspondence to District is referred to as the “Dispute.”

Q. District is sensitive to the concerns of City and would like to provide benefits to City to mitigate the concerns raised by the City. Both Parties seek to avoid costly and time-consuming litigation. To this end, District agrees to limit enrollment of the High School at 1200 students and develop a new aquatics center in conjunction with the development of the Project (as described in this Agreement) which may be used by both Parties and City has agreed to operate and maintain the aquatics center. Additionally, District and City are willing to commit to joint
use of their athletic fields and District is willing to make the Project available as an Emergency Shelter for the American Red Cross to help satisfy the City’s Housing Element needs.

R. The District Board and City’s City Council believe that the public interest is served by settling the Dispute on the terms provided in this Agreement. This Agreement is intended by the Parties to resolve the Dispute in all respects.

FOR AND IN CONSIDERATION of the above-referenced recitals and the promises and covenants contained in this Agreement, the Parties agree as follows:

2. AQUATICS CENTER.

A. As described below, District agrees to design, and, if approved by the District Board, District agrees to cause construction of an “Aquatics Center” on the Property. If the Aquatics Center is approved before construction of the Project (as previously reviewed by the FEIR), the construction of the Aquatics Center must take place concurrently with the construction of the Project. If the Project is ready to be constructed before final approval of the Aquatics Center, including any third party litigation challenging the Aquatics Center, construction of the Aquatics Center must commence immediately upon final approval or resolution of such litigation.

B. At a minimum, the Aquatics Center must encompass approximately two (2) acres at the northwest corner of the Property and include the following:

i. An outdoor 50 meter pool for swimming, water polo, physical education/recreational use. In addition, if the Aquatics Center budget allows (as reasonably determined by District), the Aquatics Center should include a spring board diving board; a snack or small kitchen facility; and a 20 ft. X 40 ft. therapy pool with separate changing facilities for men and women.

ii. A moveable bulkhead for short course swim.
iii. Associated support structures/facilities to include at a minimum locker rooms and restrooms.

iv. Separate meters for electricity, water, and gas to be installed to differentiate the Aquatics Center from the rest of the High School facility.

v. The Aquatics Center may include solar panels to reduce the cost of utilities.

vi. A conceptual design for the Aquatics Center, is attached as Exhibit “A,” and incorporated by reference (the “Conceptual Design”).

C. The Final Design.

i. The Final Design for the Aquatics Center must be consistent with all requirements of applicable law including, without limitation, the Education Code and California State high school facility requirements.

ii. The Final Design for the Aquatics Center will be consistent with, not be materially different from, and not be smaller than the Conceptual Design.

iii. District will form a Design Committee for the Aquatics Center and City will be entitled to representation on this Committee. District will accommodate, to the extent reasonable and feasible, the comments of City. Except as set forth in clause (iv) with respect to equipment choices for the Aquatics Center, the determination of the ultimate Final Design for the Aquatics Center rests with the District Board.

iv. With respect to decisions about equipment choices relating to operation efficiencies of the Aquatics Center and the quality of the equipment, District must implement the recommendations of City provided that such recommendations do not cause District’s total costs for the Aquatics Center to exceed $6,000,000 as specified in Section 6(A) below or City pays for any costs in excess of this amount.
v. Should City and District have a dispute regarding matters under clause (iv), District and City agree to submit such a dispute to nonbinding mediation as quickly as is practicable. The mediator must be someone who specializes in construction matters related to public agencies. If agreement can be reached, the Parties agree to enter into a written mediation settlement agreement setting forth the terms and conditions of the issues upon which the parties have come to an agreement. If the Parties enter into a mediation settlement agreement, it may be enforced in any court of competent jurisdiction. Both Parties agree to share the fees and costs of the mediation equally except that legal, witness, and expert costs are the direct responsibility of each individual Party.

D. None of the Parties may take any action in using, operating, or running the Aquatics Center that would jeopardize the tax exempt status of the bonds used to construct the Project and the Aquatics Center.

E. The Aquatics Center will be named “City of El Segundo – Wiseburn Unified School District Aquatics Center” or “City of El Segundo – Wiseburn School District Aquatics Center,” as applicable, or such other name as mutually agreed to by District and City.

3. PROCESSING AQUATICS CENTER PROJECT.

A. The Final Design must be reviewed in accordance with CEQA. District will pay for such Additional Review.

B. The District Board must consider the Final Design following CEQA review and, if required, modify the Final Design to mitigate, to the extent possible, environmental impacts identified by such CEQA review. Any such change to the Final Design must be the minimum needed to conform with CEQA requirements while still conforming with the Conceptual Design and the Final Design.

C. If any challenge is brought to the modification of the Project or the Additional
Review by a third party, District will take all steps necessary to remedy any defect in the CEQA documentation and/or vigorously defend the approval and the CEQA documentation in court.

D. Timing Milestones/Requirements:

i. District must retain an environmental consultant (the “Firm”) to perform the Additional Review within 20 working days of final execution of this Agreement.

ii. The Firm must make initial recommendations to District as to the level of Additional Review that is required for the Aquatics Center within 6 weeks of being provided with information by District and City sufficient to make this recommendation (“Initial Determination”). If there is a reasonable delay in needed information being provided by City, the time period will be extended for the same number of days as any delay by City.

iii. If the Additional Review is to be an Addendum, as defined by CEQA, a draft of the document must be provided to City for review and comment within 10 weeks of the Initial Determination and absent any substantial comments on the part of City, must be considered by District Board within 30 days after receiving City’s comments.

iv. If the Additional Review is a Subsequent or Supplemental EIR, as defined by CEQA, a draft of the document must be provided to City for review and comment within 16 weeks of the Initial Determination. Absent any substantial comments on the part of City, within 10 working days after receipt of City’s comments, the Additional Review document must be circulated for the appropriate public review period as determined by applicable law. Thereafter, the District Board must consider the Additional Review document and the approval of the Aquatics Center within 30 days after the close of the public review period.
v. If the Aquatics Center is approved by District Board, District must immediately modify its Project plans to include the Aquatics Center and submit such plans to the Division of State Architect ("DSA") as soon as reasonably practical.

vi. Once DSA approves the Aquatics Center plans, District must undertake construction pursuant to its normal procedures in a timely fashion. District must inform City on an ongoing basis regarding District's progress and be provided the Notice Inviting Bids, as well as construction schedules submitted by the successful bidder.

vii. In no event can District begin actual construction of the Project before rendering a decision on whether to approve the Aquatics Center after the Additional Review is completed.

E. District is the lead agency for purposes of CEQA and retains final discretion regarding the Additional Review. For any future change to the Aquatics Center, District will remain lead agency for CEQA purposes. Designation as lead agency does not require District to bear any or all costs of any future modification.

4. AQUATICS CENTER JOINT USE AGREEMENT.

A. The Parties agree to separately enter into a Joint Use Agreement ("JUA") for use of the Aquatics Center in accordance with the requirements of this Agreement.

B. The JUA for the Aquatics Center must, at a minimum, provide as follows:

i. The term must be at least 25 years with a 25 year renewal option.

ii. The form of the JUA must be substantially similar to existing joint facility use agreements between school districts and cities in California.

iii. Unless otherwise provided in the JUA, District and ESUSD will have exclusive (i.e., public use is prohibited during these times) and equal use of the Aquatics Center, including the therapy pool, Monday through Friday, for a maximum of six hours per day for the period commencing
one week before the start of the Wiseburn School Year through the end of the Wiseburn School Year, and on select pre-agreed upon, non-school days which days cannot exceed twelve days per year. All other hours will be governed in accordance with Section 4(B)(vi) of this Agreement. The JUA may utilize a method for making changes to this schedule without amending this Agreement. For any such schedule, however, District and ESUSD uses must have priority over other recreational uses. Before the academic year commences, District, ESUSD and City will develop a master calendar for Aquatics Center use.

iv. District’s and ESUSD’s use of the Aquatics Center must be equitably determined by the JUA to accommodate, among other things, the El Segundo High School swim teams or water polo teams during times identified by the JUA to which the ESUSD may be a party.

v. City will have exclusive use of the Aquatics Center, including the therapy pool, during all days and times that District and/or ESUSD do not have such exclusive use. If District and ESUSD have different exclusive use periods and ESUSD has no objection, City may use the therapy pool during ESUSD’s sole exclusive use period.

vi. At all times during which City has use of the Aquatics Center, City may utilize its park permitting regulations as set forth in El Segundo Municipal Code (“ESMC”) §§ 9-8-1, et seq. for purposes of scheduling events at the Aquatics Center with the understanding that all persons residing in the Wiseburn School District are considered City residents for purposes of the Aquatics Center only and entitled to use the Aquatics Center on the same terms and conditions as residents of the City. If it is determined that the park permitting regulations violate the bond restrictions, appropriate adjustments will be made by the City.
vii. City will operate the Aquatics Center for a minimum of one full year after completion and opening of the Aquatics Center. City will also, at a minimum, maintain and repair the pool and therapy pool for use by District students for five years after opening.

viii. City will provide as much notice as practicable before terminating the JUA. Such notice may include, without limitation, notice of adoption of any budget for an upcoming fiscal year which does not include funds to operate and maintain the Aquatics Center.

ix. The JUA must contain a mutual defense, indemnification and hold harmless provision.

x. The JUA must contain a requirement that each Party maintain appropriate levels of insurance to cover their respective use of the Aquatics Center in an amount to be agreed upon in the JUA.

xi. The cost of utilities will be allocated between District and City based on their respective exclusive use periods for the Aquatics Center.

xii. During the term of the JUA, District’s share of revenue from the operation of the Aquatics Facility must be allocated to City to offset City’s share of operation and maintenance costs.

xiii. ESUSD’s use of the Aquatics Center will be conditioned, at minimum, upon ESUSD agreeing to the mutual defense, indemnification and hold harmless, and providing necessary insurance.

C. Replacement Reserve Fund.

i. District and City will establish a replacement reserve fund to be maintained by District. The timing of the payments will be governed by the JUA. The Replacement Reserve funds must be used by District to make necessary capital improvements. City is not entitled to reimbursement of any such
funds if it terminates the JUA, or the JUA expires, before the expenditure of such funds.

ii. For the first twenty-five (25) year term of the JUA, City must contribute the sum of $26,000 annually to the replacement reserve fund. District is not required to make contributions to the fund until after the fifth year of the operation of the Aquatics Center in order to help offset District’s development and construction costs. Thereafter, District must contribute the sum of $14,000 annually to the replacement reserve fund for the remainder of the first twenty-five (25) year term of the JUA.

iii. During the second twenty-five (25) year term of the JUA, District and City must each contribute the sum of $20,000 annually to the replacement reserve fund.

D. The terms of the JUA for the Aquatics Center must incorporate the deal points set forth above as well as other provisions of this Agreement and neither Party may object to the JUA if it substantially conforms to such terms. Failure of the Parties to agree in the JUA on minor, non-substantive issues and immaterial deviations are not grounds for invalidating this Settlement Agreement.

E. The JUA must include a provision requiring the Parties to submit any dispute involving the JUA to arbitration before any party can file a petition with the Los Angeles Superior Court.

i. Any dispute must be resolved by arbitration before a retired judge of the Superior Court of the State of California (the "Arbitrator") under the auspices of Judicial Arbitration & Mediation Services, Inc. ("JAMS").

ii. The arbitration must be conducted in Los Angeles County, California. Any party may be represented by counsel or other authorized representative.
iii. The decision rendered by the arbitrator will become binding upon the parties unless appealed to the Los Angeles County Superior Court within thirty (30) days of the decision. If subsequent litigation results in an award to the party appealing the arbitration that is less than or equal to that of the arbitration decision, or if the litigation results in a decision in favor of the nonappealing party, then the party appealing the arbitration will pay the nonappealing party’s attorney’s fees and court costs.

iv. Should a party timely object to the arbitration decision, it may file a petition with the Los Angeles County Superior Court in accordance with California Code of Civil Procedure ("CCP") §§ 1285, et seq. Notwithstanding the limitations set forth in CCP § 1286.2, the court may vacate, correct, or adjust an arbitration award, and enter judgment in accordance with CCP § 1287.4, for any legal or equitable basis including, without limitation, error of law. The court will apply the substantial evidence standard of review when considering the appeal of an objecting party.

5. ATHLETIC FACILITIES JUA. The Parties agree to enter into a JUA for use of the fields at the Project and at City-owned athletic fields at the northeast corner of Mariposa Avenue and Nash Street and cooperate to identify other facilities where joint, and reciprocal, use of athletic facilities may be possible. This JUA may be part of the Aquatics Center JUA or a separate JUA.

6. DISTRICT RESPONSIBILITIES. Without admitting that the FEIR is deficient, the District must undertake the following obligations in response to the City’s concerns regarding the FEIR and the Project:

A. District must pay up to $6,000,000 for the design, development, planning and construction of the Aquatics Center.

B. District will hold title to the Property and all improvements including, without limitation, the Aquatics Center.

SETTLEMENT AGREEMENT
C. District will cap daytime high school enrollment at the Property at 1,200 students to ensure a Small Learning Community.

D. District will devote appropriate and sufficient resources to maintain a safe and secure environment on the Property during school hours, including having a full time Security Coordinator on the campus.

E. District will implement the mitigation measures set forth in the FEIR to ensure safe student drop-off areas which do not pose either a pedestrian or a vehicular hazard on the surrounding public streets. If issues develop relating to drop-off and pick-up, District will work with City to resolve such matters.

F. District will make the Property available as an Emergency Shelter for the American Red Cross.

7. CITY RESPONSIBILITIES.

A. Administrative Determination regarding District Office.

i. Within 10 days after this Agreement becomes effective, District will file an application with the El Segundo Planning and Building Safety Department to seek a determination pursuant to ESMC § 15-5E-2(K) that the use of up to 12,000 square feet of the Project building for office space by the Wiseburn School District and the Da Vinci Charter Schools staff is similar to other allowed uses in the Urban Mixed-Use North zone and may be allowed as a land use. City will process such application in accordance with CEQA and ESMC Chapter 22. City agrees that it will recommend to the Director that District’s application be approved.

ii. If City does not approve the District’s application within two hundred ten (210) days after this Agreement becomes effective, District may act to void this Agreement. If District seeks to void this Agreement, it must provide written notice to City and City then has a new 30-day statute of
limitations period in which to challenge the original approval of the Project based on any timely claims that could have been made at such time. The 30-day period commences upon receipt of written notice by City. In the event, District elects to void this Agreement pursuant to this Section, any remedy for non-performance set forth in Section 9, will be unavailable to City. This Section will survive any voiding of the remaining Agreement.

B. Operation and Maintenance. Once the Aquatics Center receives its final certificate of occupancy and is open to the public, City will operate and maintain it in accordance with the JUA.

C. Grand Extension. Unless required by law, City will not undertake a public works project to implement an east-west extension of Grand Avenue during the term of the JUA and so long as the Property is operated as a school.

8. NO LIMITATION OF POWERS.
   A. Nothing in this Agreement is intended to, nor can it, act as a limitation on City’s present or future exercise of municipal powers in accordance with the California Constitution and applicable law.
   B. Nothing in this Agreement is intended to, nor can it, require the District Board to exercise its discretion in any way when considering whether to approve the Final Design.

9. REMEDIES/GUARANTEES OF PERFORMANCE.
   A. District must build the Aquatics Center in accordance with this Agreement. The Parties agree that failure of District to meet this standard constitutes a default of this Agreement. The Parties agree that this default will result in damage and injury to City. The Parties further agree, however, that actual damages incurred by City as result of such default is difficult if not impossible to ascertain with any degree of certainty or accuracy.
Accordingly, the parties have negotiated and have agreed that District is liable to, and must pay, City for liquidated damages, and not as a penalty, $1.5 million for District’s failure to construct the Aquatics Center. If for any reason District does not approve or construct the Aquatics Center, City is entitled to the sum of $1.5 million in liquidated damages to fully compensate the City for the loss of the ability to use the pool and the impacts on the City’s ability to provide adequate recreational facilities to its citizens. Recovering liquidated damages is the sole and exclusive remedy of City if the District does not approve or does not construct the Aquatics Center.

i. District must give at least 10 business days notice to City of the date and time of the meeting at which the District Board will consider the Aquatics Center. If District does not approve the Aquatics Center within two hundred ten (210) days after this Agreement becomes effective, City is immediately entitled to such funds. The Parties may extend this date for good cause shown and by mutual written agreement.

ii. If, after any approval of the Aquatics Center, District decides not to construct the Aquatics Center, District will give City written notice of this decision and City is immediately entitled to liquidated damages.

iii. Absent third party litigation which delays the construction of the Aquatics Center, if no formal action is taken by District but the Aquatics Center is not under construction by the time the High School opens, City is entitled to liquidated damages.

iv. A notice of completion for the Aquatics Center must be recorded not later than June 30, 2017. If a notice of completion is not recorded by that date, City is entitled to liquidated damages. City’s entitlement to liquidated damages will be extinguished upon a notice of completion being recorded for the Aquatics Center.
C. City guarantees that it will operate the Aquatics Center for one full year and it is anticipated that City will operate and maintain the Aquatics Center for the full term of the JUA. If, however, City terminates the JUA after the first full year, but before the end of the fifth year, City agrees to continue to maintaining and repairing the pool and therapy pool in such condition so that it may be used by District students for District’s exclusive use period as defined in the JUA through the end of the fifth year.

10. COMPROMISE, SETTLEMENT, AND RELEASE. Except to the extent that City may exercise its police powers to enforce applicable law after the Aquatics Center is approved, in consideration of the mutual terms and conditions set forth in this Agreement, the Parties compromise and settle any and all past, present, or future claims, demands, obligations, or causes of action for compensatory or punitive damages, costs, losses, expenses, and compensation, whether based on tort, contract, or other theories of recovery, that the Parties have or might accrue arising from the Dispute or the Additional Review. Further, the Parties, on their respective behalves and those of their heirs, executors, administrators, and assigns fully release the other Party, its elected and appointed officials, employees, agents, and all other persons and associations, known or unknown, from any obligation or liability arising from the Dispute or the Additional Review. The Parties agree that this compromise, settlement, and release constitutes a bar to any claim involving the Dispute or the Additional Review.

11. GENERAL RELEASE OF ALL KNOWN OR UNKNOWN CLAIMS. The Parties acknowledge and agree that this Agreement applies to all claims that the Parties may have against each other arising out of the Dispute for injuries, damages, or losses to person and property, real or personal, whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, or patent or latent, including those that may arise from the Additional Review.

12. CIVIL CODE § 1542. The Parties, or their representatives, certify that he or she read Civil Code § 1542, set forth below, and indicates that fact by initialing here: [CITY] [DISTRICT].
"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

13. WAIVER OF § 1542 PROTECTIONS. After reading and understanding Civil Code § 1542, City and District voluntarily waive their application to this Agreement. City and District understand and acknowledge that the significance and consequence of this waiver is that even if City or District should eventually suffer additional damages arising out of the Dispute or the Additional Review, City and District will not be permitted to make any claim against the other Party for those damages. Furthermore, City and District acknowledge that City and District intend these consequences even as to claims for damages that may exist, and which, if known, would materially affect City’s and District’s decision to execute this Agreement, regardless of whether City’s or District’s lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

14. NO ASSISTANCE TO THIRD PARTY LITIGATION. City agrees that it will not directly or indirectly assist in any challenge brought by a third party against the District with respect to the Project, the Dispute or the Additional Review.

15. THIRD PARTY LITIGATION. If litigation is brought by a third party to challenge the construction, development or funding of the Project, District may act to void this Agreement. If District seeks to void this Agreement, it must provide written notice to City and City then has a new 30-day statute of limitations period in which to challenge the original approval of the Project based on any timely claims that could have been made as such time. The 30-day period commences upon receipt of written notice by District. In the event, the District elects to void this Agreement pursuant to this Section 15, any remedy for non-performance set forth in Section 9 will unavailable to City. This Section will survive any voiding of the remaining Agreement.

16. LEGAL ADVICE. Each Party warrants and represents that in executing this Agreement, each Party sought legal advice from the attorney of their choice, that the terms of this Agreement
and its consequences were completely read and explained to each Party by that attorney, and that each Party fully understands the terms of this Agreement.

17. FULL DISCLOSURE. Each Party acknowledges and represents that each Party was apprised of all relevant information and data relevant to the Dispute and this Agreement, including, without limitation, future risks, complications, and costs. Each Party further acknowledges and represents that, in executing this Agreement, the Party has not relied on any inducements, promises, or representations made by the other Party or any representative of the other Party.

18. WAIVER. A waiver by either Party of any breach of any term, covenant, or condition contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement, whether of the same or different character.

19. NOTICES. All communications to either Party by the other Party will be deemed made when received by such Party at its respective name and address as follows:

<table>
<thead>
<tr>
<th>CITY</th>
<th>DISTRICT</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of El Segundo</td>
<td>Wiseburn School District</td>
</tr>
<tr>
<td>350 Main Street</td>
<td>13530 Aviation Boulevard</td>
</tr>
<tr>
<td>El Segundo, California 90245</td>
<td>Hawthorne, California 902500</td>
</tr>
<tr>
<td>Attention: City Manager</td>
<td>Attention: Superintendent</td>
</tr>
</tbody>
</table>

Any such written communications by mail will be conclusively deemed to have been received by the addressee upon deposit thereof in the United States Mail, postage prepaid and properly addressed as noted above. In all other instances, notices will be deemed given at the time of actual delivery. Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this Section.

20. ATTORNEYS’ FEES AND COSTS. The Parties each agree to waive any entitlement of attorneys’ fees and costs incurred with respect to the Dispute and the negotiation of this Agreement.
21. NO ADMISSION OF LIABILITY. It is understood and agreed that this settlement is a compromise of the Dispute, and that entry into this Agreement cannot be construed as an admission of liability on District’s behalf.

22. INTERPRETATION. This Agreement was drafted in and will be construed in accordance with the laws of the State of California, and exclusive venue for any action involving this Agreement will be in Los Angeles County.

23. ENTIRE AGREEMENT. This Agreement sets forth the entire understanding of the Parties. There are no other understandings, terms or other agreements, expressed or implied, oral or written.

24. RULES OF CONSTRUCTION. Each Party had the opportunity to independently review this Agreement with legal counsel. Accordingly, this Agreement will be construed simply, as a whole, and in accordance with its fair meaning; it will not be interpreted strictly for or against either Party.

25. SEVERABILITY. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement will continue in full force and effect.

26. CAPTIONS. The captions of the Sections of this Agreement are for convenience of reference only and will not affect the interpretation of this Agreement.

27. TIME IS OF ESSENCE. Time is of the essence for each and every provision of this Agreement.

28. FORCE MAJEURE. Should performance of this Agreement be prevented due to fire, flood, earthquake, explosion, acts of terrorism, war, embargo, government action, civil or military authority, the natural elements, or other similar causes beyond the Parties’ reasonable control, then the time periods within this Agreement will be automatically extended for the time period during which it is impracticable for the Parties to perform.
29. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which will be deemed an original.
IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first hereinabove written.