



AGENDA

EL SEGUNDO RECREATION & PARKS COMMISSION –
AQUATICS SUBCOMMITTEE

REGULAR MEETING

MONDAY, OCTOBER 21, 2024

10:00 AM

CITY COUNCIL CHAMBER
350 MAIN STREET, EL SEGUNDO, CA 90245

Ryan Baldino
Marc Cavagnolo
Lee Davis
Joseph Lormans
Kelly Watson

The Aquatics Subcommittee, with certain statutory exceptions, can only take action upon properly posted and listed agenda items. Any writings or documents given to a majority of Aquatics Subcommittee members regarding any matter on this agenda that the City received after issuing the agenda packet are available for public inspection in the Checkout Building in Recreation Park 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 Aquatics Subcommittee meetings. Unless otherwise noted in the agenda, the public can only comment on city-related business that is within the jurisdiction of the Aquatics Subcommittee and/or items listed on the agenda during the Public Communications portions of the Meeting. The time limit for comments is five (5) minutes per person. Before speaking to the Aquatics Subcommittee, please state: your name, residence, and organization/group you represent, if desired. Please respect the time limits.

While comments are welcome, the Aquatics Subcommittee may not take action on any matter not on this Agenda. Aquatics Subcommittee members may respond to comments after the Public Communications is closed. Members of the Public may provide comments electronically by sending them to Chelsea Shafer, Senior Administrative Specialist at cshafer@elsegundo.org.

REASONABLE ACCOMMODATIONS: In compliance with the Americans with Disabilities Act and Government Code Section 54953(g), the City Council has adopted a reasonable accommodation policy to swiftly resolve accommodation requests. The policy can also be found on the City's website at <https://www.elsegundo.org/government/departments/city-clerk>. Please contact the City Clerk's Office at (310) 524-2308 to make an accommodation request or to obtain a copy of the policy.

CALL TO ORDER / 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 Aquatics Subcommittee on behalf of another, and employees speaking on behalf of their employer, must so identify themselves prior to addressing Aquatics Subcommittee. 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 the Aquatics Subcommittee members to take action on any item not on the agenda. Aquatics Subcommittee members and/or Recreation, Parks and Library Director may respond to comments after Public Communications is closed.*

A. CONSENT

1. Aquatics Subcommittee Meeting Minutes

Recommendation -

1. Approve Regular Subcommittee meeting minutes of September 16, 2024.
2. Alternatively, discuss and take other action related to this item.

B. UNFINISHED BUSINESS

C. NEW BUSINESS

2. Aquatics Report Review

Recommendation -

1. Receive and file information on the Aquatics Report.
2. Alternatively, discuss and take other action related to this item.

3. Joint Use Agreement Review

Recommendation -

1. Receive and file information on the Joint Use Agreements for the Plunge.
2. Alternatively, discuss and take other action related to this item.

D. REPORTS

4. Plunge Update

Recommendation -

1. Accept and file update report.
2. Alternatively, discuss and take other action related to this item.

5. Aquatics Center Maintenance Update

Recommendation -

1. Accept and file update report.
2. Alternatively, discuss and take other action related to this item.

6. Upcoming Events

Recommendation -

1. Receive and file information on upcoming events and provide direction, as needed.
2. Alternatively, discuss and take other action related to this item.

7. DIRECTOR COMMENTS
8. MEMBER COMMENTS
9. STAFF COMMENTS

ADJOURNMENT

POSTED

DATE: **10/17/2024**

TIME: **5:00 pm**

BY: **Chelsea Shafer,**

Senior Administrative Specialist

REGULAR MEETING MINUTES OF THE EL SEGUNDO RECREATION & PARKS
COMMISSION – AQUATICS SUBCOMMITTEE
MONDAY, SEPTEMBER 16, 2024

CALL TO ORDER – Director Aly Mancini called the meeting to order at 10:01 am.

ROLL CALL

Member Watson	-	Present
Member Davis	-	Absent
Member Baldino	-	Present
Member Cavagnolo	-	Present
Member Lormans	-	Present

PUBLIC COMMUNICATIONS – (Related to City Business Only – 5-minute limit per person, 30-minute limit total)

None

A. CONSENT CALDENDAR:

1. MOTION by Member Watson, SECONDED by Member Cavagnolo, approving Regular Committee meeting minutes of August 19, 2024, MOTION PASSED. 4/0/1

B. UNFINISHED BUSINESS
None

C. NEW BUSINESS

2. Chlorine Level Report

Employees from Public Works provided a report to the Subcommittee about the chlorine levels utilized for the City's pools. Members of the committee asked questions related to county regulations, required ranges, range determination, and testing. Public Works Staff provided additional information.

Director Aly Mancini requested that a Public Works Liaison be available for the subcommittee on an ongoing basis and to provide an update each month.

3. Historical Water Temperature Report

Member Lormans provided a report to the Subcommittee about the determination of water temperature for the City's pools. Members asked questions related to

temperature ranges, outliers that affect temperature, heater impacts, and regional pool temperatures and usage. Member Lormans along with Public Works staff provided additional information.

4. Pool Allocation Process

Member Lormans provided a report to the Subcommittee about the determination of Pool Usage Allocation. Director Aly Mancini provided additional information as it related to staff level and designation of duty. Subcommittee members asked questions related to reportable success criteria, historical allocation of swim teams, future decision-making authority, and requirements of user groups. Director Aly Mancini and Member Lormans provided additional information.

5. Aquatics Report Review

Member Lormans answered any additional questions the Subcommittee members may have had regarding the aquatics report. Members of the subcommittee asked questions related to instructor rate, participation hours, and revenue. Member Lormans provided additional information.

D. REPORTS

6. Plunge Update - *(This item was moved up the agenda after C2 at the request of Director Aly Mancini)*

Sheryl from Public Works discussed the ongoing construction taking place at the Plunge including led abatement, asbestos abatement, bleachers, slab demolition, and equipment room demolition. Building construction is to take place the week of September 16th. Members of the Subcommittee asked questions related to contractor information and budget implications. Member Baldino requested project updates related to the budget and construction schedule for the plunge.

7. Aquatics Center Maintenance Update

None.

8. Upcoming Events

Member Lormans spoke about the South Bay Tournament taking place at the Aquatic Center beginning on September 27.

9. DIRECTOR COMMENTS

Director Aly Mancini spoke to reviewing the Wiseburn Field Join Use Agreement as it relates to field utilization and parking allocation.

10. COMMISSIONER COMMENTS

Member Baldino discussed the medal donations.

Member Watson discussed the Plunge progress.

Member Cavagnolo discussed the Plunge progress, a pool utilization survey to include lane utilization and a chlorine level report. Member Lormans provided additional information and stated that the reports would be provided at a later date.

Member Lormans commented on the aquatic center attendance during the summer.

11. STAFF COMMENTS

Member Lormans introduced Bailey Myers to the subcommittee.

Adjourned at 10:51 AM

Chelsea Shafer

Chelsea Shafer, Senior Administrative Specialist

Item C2



Total AC
Lane
hours:
9600

September 2024 Report

Aquatics Center Instructional Programming		Lane Hours	\$	Number of Participants
Contract Classes				
	Naomi's Hiit Water Aerobics	168	\$ 8,830.00	799
	Saul Gonzalez - Swim With Me	48	\$ 2,642.00	6
Swim Lessons				
	Group	128		
	Semi-Private and Private	36		
Lesson registration for September took place in August. Revenue and participation are documented in that report.				
Totals			\$ 11,472.00	805

Aquatics Center Public Drop In Programming			\$	Number of Customer Lane Reservations
Public Swim				
	Reservations	4346	\$ 12,608.00	7076
	Lap Swim Drop in	492	\$ 797.00	315
	Recreation Swim	168	\$ 2,671.00	753
Totals			\$ 16,076.00	8144

Hilltop Pool Programming			\$	Number of Customer Lane Reservations
Public Swim				
	10 hrs			
	Resident rec swim		\$ -	69
	Non Resident Rec swim		\$ 114.00	19
	Drop in camp participants		\$ -	0
	Hilltop Party Rentals		\$ -	0
	Hilltop Membership		\$ -	0
Totals			\$ 114.00	88

Annual Membership Sales at the Aquatics Center			\$	Memberships sold
Wiseburn Rec IDs	Adult ID		\$ 75.00	5
Wiseburn Rec IDs	Senior ID		\$ 5.00	1
Wiseburn Rec IDs	Youth ID		\$ 30.00	3
Wiseburn Rec IDs	Infant ID		\$ -	0
Totals			\$ 110.00	9

El Segundo Rec IDs	Adult ID		\$ 180.00	12
El Segundo Rec IDs	Senior ID		\$ 10.00	2
El Segundo Rec IDs	Youth ID		\$ 60.00	6
El Segundo Rec IDs	Infant ID		\$ -	0
Totals			\$ 250.00	20

Membership Sales			\$	Passes Purchased to use towards Lane Rentals
El Segundo Resident Punch Passes				
	10 Punch Pass		\$ 423.00	10
	20 Punch Pass		\$ 50.00	1
	30 Punch Pass		\$ 1,523.00	16
El Segundo Resident Membership Passes				
	Annual		\$ 1,400.00	4
Wiseburn Resident Punch Passes				
	10 Punch Pass		\$ 98.00	3
	20 Punch Pass		\$ -	0
	30 Punch Pass		\$ 507.00	6
Wiseburn Resident Membership Passes				
	Annual		\$ -	0
Non-Resident Punch Passes				
	10 Punch Pass		\$ 1,548.00	29
	20 Punch Pass		\$ 2,400.00	25
	30 Punch Pass		\$ 4,856.00	37
Non-Resident Membership Passes				
	Annual		\$ 3,200.00	6
Totals			\$ 16,005.00	137

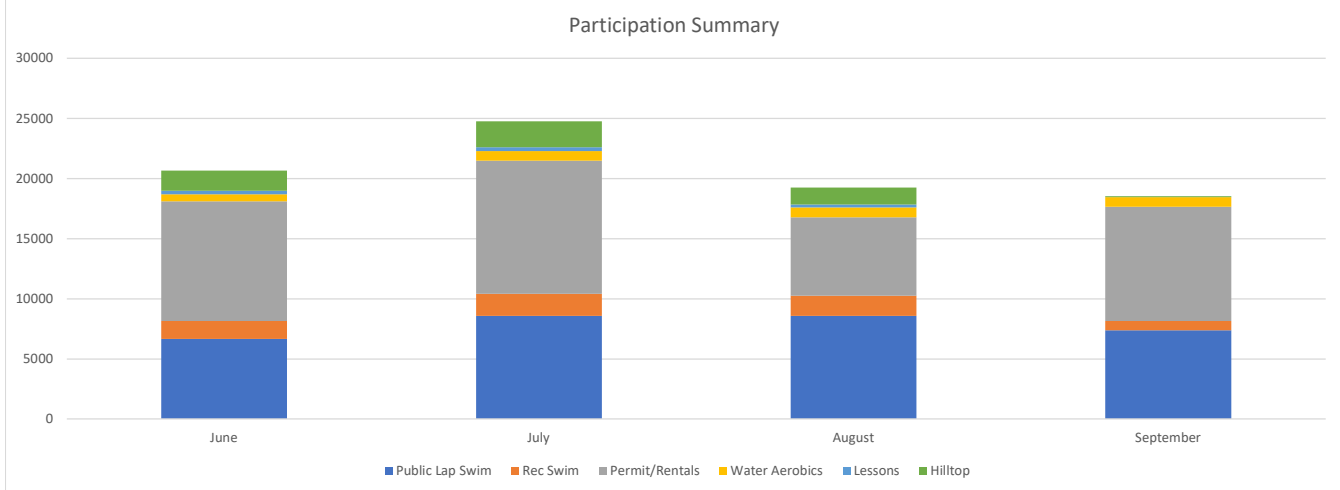
Aquatics Center Permit Groups		Lane Hours	\$	Estimated Participants (4 to 5 per lane)
Alpha		927.00	\$ 16,686.00	3708
Beach Cities		484.00	\$ 8,328.00	1936
SCAQ		404.50	\$ 7,281.00	1618
South Bay United		567.00	\$ 5,566.40	1134
Tower 26		142.00	\$ 2,556.00	426
Trojan		250.00	\$ 2,450.00	500
Coastal		90.00	\$ 882.00	180
Totals		2864.50	\$ 43,749.40	9502.00

Events			\$	Number of Participants
Boy Scouts Instructional Pool Rental				
			\$ 72.00	20
Dive in Movie				
	20-Sep		\$ 372.00	48
ESHS South Bay Tournament				
	9/27-9/28		\$ -	200
Totals			\$ 444.00	268

TOTAL		Total Revenue	Estimated Amount of Visitors in September
		\$ 88,220.40	18973.00

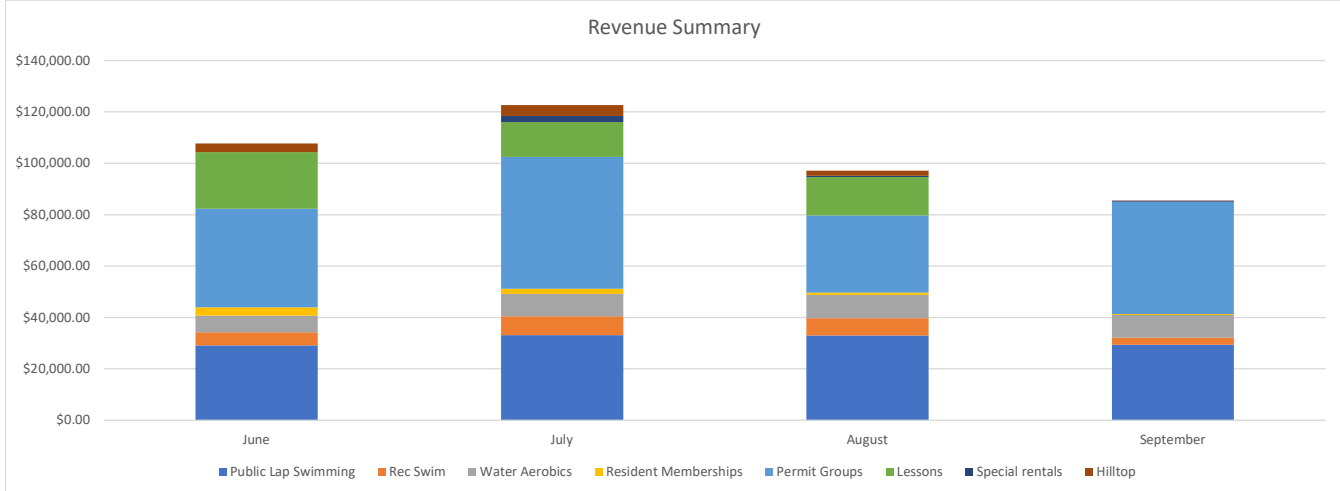
Monthly Statistics	June		July		August		September	
	Revenue	Participation	Revenue	Participation	Revenue	Participation	Revenue	Participation
Water Aerobics	\$ 6,478.00	586	\$ 8,672.00	783	\$ 9,054.00	829	\$ 8,830.00	799
Lesson Programming	\$ 22,042.50	314	\$13,650.00	336	\$14,922.50	231	\$0.00	0
Lap Swimming	\$ 29,122.00	6665	\$33,074.00	8577	\$32,936.00	8577	\$29,410.00	7391
Family/Rec Swim	\$ 5,118.00	1492	\$ 7,397.00	1849	\$ 6,738.00	1688	\$ 2,671.00	753
Annual Membership Sales	\$ 3,275.00	296	\$2,075.00	172	\$920.00	78	\$360.00	29
Rentals/Permit Groups	\$ 38,370.10	9936	\$ 51,236.30	11055	\$ 30,086.00	6510	\$ 43,749.40	9502
Special Events/Rentals	\$ -	0	\$ 2,315.00	113	\$ 543.00	278	\$ 440.00	268
Hilltop	\$ 3,345.00	1655	\$ 4,267.00	2144	\$ 1,898.00	1416	\$ 114.00	88
	\$104,405.60	19,289	\$118,419.30	22,772	\$94,656.50	17,913	\$85,574.40	18,830

Participation Summary



Total Participation June-September 78,804

Revenue Summary



Total Revenue June-September \$403,055.80

**JOINT USE AGREEMENT BETWEEN
WISEBURN UNIFIED SCHOOL DISTRICT
AND
CITY OF EL SEGUNDO
FOR THE USE OF AQUATICS CENTER**

THIS JOINT USE AGREEMENT (“Agreement”) is approved and entered into as of this 10th day of January, 2019 (“Effective Date”), by and between the WISEBURN UNIFIED SCHOOL DISTRICT, a California public school district duly organized and existing under Chapter 1 of Division 3 of Title 2 of the Education Code of the State of California (the “District”) and the CITY OF EL SEGUNDO, a general law city and municipal corporation (“City”). District and City may be referred to individually as a “Party” and collectively as “Parties.”

RECITALS

WHEREAS, District is the owner of certain real property located at 201 N. Douglas, El Segundo, CA 90245, commonly known as the Wiseburn High School Home of the Da Vinci Schools campus, as more particularly described in Exhibit “A,” attached hereto and incorporated herein by this reference (the “Property”); and

WHEREAS, pursuant to that First Amended and Restated Settlement Agreement between the Parties dated January 19, 2016 (“Settlement Agreement”), the Parties agreed that the District would construct an Aquatics Center, to be known as the City of El Segundo-Wiseburn Unified School District Aquatics Center (which may be renamed upon subsequent mutual written agreement by the District and City pursuant to the Settlement Agreement) on a portion of the Property, which would be jointly used by the Parties; and

WHEREAS, the Settlement Agreement (Section 4.A.) requires City and District desire to enter into a joint use agreement for the use of the Aquatics Center located on the Property designated in Exhibit “A” (“Aquatics Center”) in accordance with the terms and conditions of this Agreement; and

WHEREAS, the City Council of the City has authorized execution of a joint use agreement with El Segundo Unified School District as allowed by Section 4 of the Settlement Agreement and such Section 4 also sets forth the scheduling considerations that will be applicable to such use during such times that there is a joint use agreement between the City and El Segundo Unified School District; and

WHEREAS, the Parties desire by this Agreement to provide for the terms and conditions for the use of the Aquatics Center.

AGREEMENT

NOW, THEREFORE, the Parties hereto for the consideration hereinafter expressed, covenant and agree as follows:

Section 1. Grant of License and Use of Aquatics Center. District grants a non-exclusive license to City to use the Aquatics Center for the purpose of operating and maintaining the Aquatics Center, pursuant to the terms set forth herein.

Section 2. Aquatics Center Committee. A committee ("Aquatics Center Committee") shall be established by the District and City to implement the terms of this Agreement. The City and District shall each appoint three (3) members to the Aquatics Center Committee, for a total of six (6) members. Each Party shall appoint one (1) member from their respective maintenance departments, one (1) member from their respective finance departments and one (1) member from their respective parks and recreation/athletic departments. The Aquatics Center Committee shall meet at least four (4) times per year, generally prior to the beginning of each sports season, at a date, time, and location convenient to both Parties. Either Party may request additional meetings, and/or the Aquatics Center Committee may establish a schedule of more frequent meetings. The purview of the Aquatics Center Committee shall be to: in accordance with Section 3 below, schedule the dates and times for the District's and City's use of the Aquatics Center; discuss exclusive and compatible uses as well as shared use; plan for any significant construction or maintenance to be performed; discuss, plan and recommend allocation of funds from the Replacement Reserves (defined below) toward capital improvements at the Aquatics Center; and discuss any other issues regarding the shared use of the Aquatics Center. The Aquatics Center Committee shall implement the terms of the Settlement Agreement, for scheduling purposes as stated in the Recitals. Aquatics Center Committee meetings shall be agendaized open public meetings held in accordance with the Ralph M. Brown Act. Stakeholders and high-school competitive teams that either the District or City have agreements with regarding use of the Aquatics Center, shall be invited to attend and participate in Committee meetings. The Aquatics Center Committee will establish subcommittees to address specific issues and day-to-day operations, so that the Aquatics Center Committee may focus on business decisions, long-term planning and broader issues that relate to the Agreement.

Section 3. Scheduling.

(a) District Use. The District shall have exclusive use of the Aquatics Center for purposes related to District activities, including both the large pool and therapy pool for a maximum of three (3) hours per day Monday through Friday, commencing one week before the start of the District's commencement of regular school year classes through the date of cessation of such classes ("District's School Year"). Any revenues

generated from use of the Aquatics Center during the times allowed for by this Section 3(a), except revenues from food or beverage concessions, shall be remitted to the City to offset routine maintenance and repair, landscaping and custodial services costs. The Parties shall both be allowed to hang or set up signage of reasonable size and colors for events and to recognize the achievements of their student athletes during their hours of use only. Such signage must be removed after use.

(b) Exclusive Use Days. Additionally, the District and City shall each have the right to schedule up to six (6) exclusive non-school days per calendar year, for a total of twelve (12) days ("Exclusive Use Days"). Exclusive Use Days must be scheduled at least four (4) months in advance of the scheduled date, to allow for coordination between the Parties and may only be scheduled after 5pm on Fridays, or on Saturdays or Sundays from 5am to 10pm. The Parties and the Aquatics Committee may mutually agree to allow for scheduling uses with less than four (4) months' notice. District shall remit any revenue received from third-party users to the City to offset routine maintenance and repair, landscaping and custodial services costs. For clarification, "revenue received from third-party users" is defined as fees the District may charge and receive from third party users and does not include funds the third-party user may receive from participants, such as from the sale of concessions. During its Exclusive Use Days, District may allow fundraising events by non-profit District support organizations, such as, but not limited to, booster clubs, educational foundations, etc., and any revenues from those fundraising events shall be used for these District support organizations purposes and shall not be required to be remitted to the City. Exclusive Use Days are defined to include exclusive use of the Aquatics Center (including both the large pool and the therapy pool), Aquatics Center Parking Lot, District Gym Restrooms and District Gym Parking Lot, as depicted in Exhibit "A."

(c) City Use. City shall have exclusive use of the Aquatics Center at all times other than the specific hours scheduled for the District's use pursuant to Section 3(a) and (b) of this Agreement. Additionally, the District may, but shall not be obligated to, allow City use of other pool areas in the Aquatics Center during the District's use of the Aquatics Center pursuant to Section 3(a) of this Agreement provided that proper safeguards, as determined in the District's sole discretion, are implemented by the City to separate the public from students, and that, notwithstanding any other provision of this Agreement, the City provides and pays for the cost of a lifeguard, in addition to the lifeguard supervising the City's use of other pool areas, to supervise the District's use of the large pool during such times that the City is using the other pool areas. 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 District's boundaries and all employees of the District and DaVinci Schools are considered City residents for purposes of the Aquatics Center only and are entitled to use the Aquatics Center on the same terms and conditions as residents of the City.

(d) Priority of Use. The Aquatics Center Committee is responsible for scheduling the dates and times for the District's and City's use of the Aquatics Center. The Aquatics Center Committee shall work cooperatively with both the District and the City to establish a schedule that accommodates both Parties' needs to the greatest extent possible.-In the event that after such efforts the Parties reach an impasse the Parties agree to a rotating priority. The first time the Parties reach a scheduling impasse, first priority shall go to the District. The second time the Parties reach a scheduling impasse, first priority shall go to the City. The rotation shall continue in an alternating pattern for the Term of the Agreement. The Aquatics Center Committee shall keep track by written documentation of which Party holds the right to first priority.

Section 4. Term. The term of this Agreement shall be for twenty-five (25) years from the issuance of the Certificate of Occupancy for the Aquatics Center ("Term"). The Parties may mutually agree to extend the Term for an additional twenty-five (25) year term ("1st Extension"), and the City shall have the sole right to extend the Term for a third twenty-five (25) year term ("2nd Extension") The Term, and any extensions thereto will be referenced to collectively as the Term. City may terminate upon two (2) years' written notice; however, City must continue to maintain and repair, as described in Section 5(a) of this Agreement, the competition pool and therapy pool for a minimum of five (5) years from the issuance of the Certificate of Occupancy for the Aquatics Center.

Section 5. Conditions to Use.

(a) Maintenance and Repair, Landscaping and Clean Up of Aquatics Center. City shall provide at its own cost the routine maintenance and repair, landscaping and custodial services for the competition pool, therapy pool and adjacent areas within the fenced in portion of the AC Property during the Term of the Agreement. Notwithstanding the above, and subject to subsequent approval by the District Board and the City Council, the City and District may agree to have the District perform the routine maintenance and repair, landscaping and custodial services subject to reimbursement of direct costs by the City. Failure to perform routine maintenance and repair to ensure adequate upkeep of facilities (e.g. failing to repair a minor visible leak that results in the need for a new roof) shall be considered negligence or misuse for purposes of this Agreement.

(b) Major Maintenance and Capital Improvements. The Aquatics Center Committee, or the "Operations Subcommittee" formed in accordance with Section 2, may recommend which Party performs the major maintenance and/or capital improvements on an annual basis for budgeting purposes, as well as a case-by-case or as-needed basis to provide flexibility for unforeseen circumstances. For purposes of this section, "major maintenance" includes but is not limited to the major repair or replacement of plumbing, heating, pumps, filtration, and electrical, systems and hardscape and pool replacements, which will be funded by the Replacement Reserves (defined below). All other kinds of

maintenance and repairs shall be considered routine maintenance and repair and shall be the responsibility of the City, or if mutually agreed, the District, as noted in Section 5(a) above.

(c) Responsibilities. Each Party shall be responsible for and shall pay for any major maintenance of any character whatsoever which is occasioned or are made necessary by reason of the negligence or misuse of the Property or Aquatics Center by said Party.

(e) Hazardous Materials. Under no circumstances during the term of this Agreement shall City use or cause to be used in the Aquatics Center any hazardous or toxic substances or materials, and under no circumstance during the term of this Agreement shall any Party store or dispose of any such substances or materials in the Aquatics Center. Notwithstanding the foregoing, either Party may use, at its own risk, in compliance with any applicable laws and District policies, any ordinary and customary materials reasonably required to be used in the normal course of use for pool facilities.

(f) Non-Interference with Activities. This Agreement shall not grant either Party, its employees, contractors, volunteers or invitees the right to interfere with any activities of the other Party, except to the extent necessary to conduct activities contemplated by Section 5 of this Agreement.

(g) Conduct of Employees, Volunteers and Invitees. Each Party shall insure that all employees, contractors, volunteers, invitees, and all others in attendance have background and medical clearance as required by law, as applicable, and will adhere to proper standards of public conduct and comply with all applicable policies. There is to be no consumption or possession of alcohol or other controlled substances, smoking, gambling, quarreling, fighting, use of profane language, or indecent exposure on or near the Property, including the Aquatics Center.

(h) Insurance.

(i) Public Liability and Property Damage. Both Parties agree to maintain in full force and effect throughout the duration of the Agreement a suitable policy or policies of public liability and property damage insurance, insuring against all bodily injury, property damage, personal injury, and other loss or liability caused by or connected with their use of the Aquatics Center under this Agreement. Such insurance shall be in amounts not less than \$5,000,000 per occurrence; \$10,000,000 for general aggregate and \$1,000,000 for property damage.

(ii) Automobile Liability. Each Party also agrees to maintain in full force and effect with regard to any owned vehicles which the respective Party brings onto the Property, including the Aquatics Center, a suitable policy or policies of automobile liability insurance with a combined single limit of \$5,000,000 per accident throughout the duration of the Agreement.

(iii) Workers' Compensation. Each Party shall also maintain, in full force and effect throughout the term of this Agreement, Workers' Compensation

insurance in accordance with the laws of California, and employers' liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per occurrence.

(iv) Notice; Additional Named Insureds. All insurance required under this Agreement shall be issued as a primary policy and contain an endorsement requiring thirty (30) days written notice from the insurance company to both Parties hereto before cancellation or change in coverage, scope or amount of any policy. Each Party, its directors, officers, agents, employees and volunteers, shall be designated as additional named insureds on the other Party's policies.

(v) Insurance Endorsements. Concurrent with the execution of the Agreement, each Party will provide the other Party with an endorsement(s) verifying such insurance and the terms described herein.

(vi) Joint Powers Authority. These insurance requirements may be satisfied through a joint powers agency, or similar entity, formed for the purpose of providing self-insurance to public entities.

(i) Indemnification.

With the exception of any liability, claims, or damages caused by the negligence or willful misconduct of the District, its board members, officers, agents, employees, volunteers, students and invitees ("District Parties"), the City shall indemnify, hold harmless, and defend the District Parties against and from any and all claims, demands, actions, causes of action, suits, losses, liability, expenses, penalties, obligations, errors, omissions and costs, including legal costs, attorney's fees and expert witness fees, whether or not suit is actually filed, and/or any judgment rendered against the District Parties, that may be asserted or claimed by any person, firm or entity for any injury, death or damage to any person or property occurring in, on or about the Property, including the Aquatics Center, after the Effective Date, arising from, or in connection with, the City's, its agents, officers, employees, contractors, volunteers, guests or invitees ("City Parties") use of the Aquatics Center, or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by the City Parties in or about the Property, including the Aquatics Center. The City's obligation to defend the District Parties is not contingent upon there being an acknowledgement or determination of the merit of any claims, demands, actions, causes of action, suits, losses, liability, expenses, penalties, obligations, errors, omissions and/or costs.

With exception of any liability, claims or damages caused by the negligence or willful misconduct of the City Parties, the District shall indemnify, hold harmless, and defend the City Parties against and from any and all claims, demands, actions, causes of action, suits, losses, liability, expenses, penalties, obligations, errors, omissions, and costs, including legal costs, attorney's fees and expert witness fees, whether or not suit is actually filed, and/or any judgment rendered against the City Parties, that may be asserted or claimed by any person, firm or entity for any injury, death or damage to any person or property occurring in, on or about the Property, including the Aquatics Center, after the Effective Date, arising from, or in connection with, the District Parties' use of the Property, including the Aquatics Center, or from the conduct of its business, or from any

activity, work, or other things done, permitted or suffered by the District Parties in or about the Property, including the Aquatics Center. The District's obligation to defend the City Parties is not contingent upon there being an acknowledgement or determination of the merit of any claims, demands, actions, causes of action, suits, losses, liability, expenses, penalties, obligations, errors, omissions and/or costs.

The provisions of this Section shall survive the termination or expiration of this Agreement.

(j) Materials, Furnishings and Equipment. Each Party, at its own cost, shall provide all materials, furnishings and equipment to be used for its respective uses.

(j) Supervision and Security. Each Party shall provide all necessary supervision of its employees, students, contractors, volunteers and invitees while using the Property, including the Aquatics Center. Each Party is solely responsible for the safety and security of its employees, students, contractors, volunteers and invitees at all times.

(k) Locks - Keying and Access Authorization. The lock style, types of gates, and key/code authorization to be utilized at the Aquatics Center will be coordinated in such a manner as to allow access to necessary City and District personnel while maintaining the safety and security of people and property.

(l) Parking. Parking in the parking lots shall not be reserved, except with respect to Exclusive Use Days, and shall be limited to standard-sized automobiles, except in specifically designated areas. Busses may park in specifically designated areas. No vehicles shall be parked in driveways, loading areas, or other areas not specifically designated for parking. The parking lots are designated in Exhibit "A." Parties may not charge a parking fee during use of the Aquatics Facility.

(m) Utilities. City shall be responsible for payment of gas utilities for the gym and pool and electric utilities for the pool equipment building associated with operation and use of the Aquatics Center during the term of this Agreement. District shall be responsible for payment of water utilities for the gym and pool, gas, reclaimed irrigation utilities and electric utilities for the portion of the gym used by the City associated with operation and use of the Aquatics Center during the term of this Agreement. Each Party shall reimburse the other Party for the user Party's proportionate share of utilities costs. The user Party's proportionate share shall be determined by dividing the number of hours used by the user Party by the total hours the Aquatics Center is used or in another equitable manner as agreed to, in writing, by the Aquatics Center Committee. The user Party shall reimburse the responsible Party for utilities costs within thirty (30) days of invoice by the responsible Party.

(n) Replacement Reserve Fund.

(i) Contributions. District and City will establish a replacement reserve fund ("Replacement Reserves") to be maintained by District. Although the District will maintain control of the Replacement Reserves and their allocation, the Parties may mutually agree to place the reserves in a City account or other type of account that will provide the maximum interest rate. The Replacement Reserves must be used by District to make necessary major maintenance improvements

and capital improvements. City is not entitled to reimbursement of any Replacement Reserves if it terminates the Agreement, or the Agreement expires, before the expenditure of such funds. For the initial Term of the Agreement, District must contribute the sum of Forty Thousand Dollars (\$40,000) annually to the Replacement Reserves. If the 1st Extension of the Agreement is exercised, District will annually contribute Forty Thousand Dollars (\$40,000) to the Replacement Reserves. If the 2nd Extension of the Agreement is exercised, and in any subsequent terms of the Agreement, District and City must each annually contribute Twenty Thousand Dollars (\$20,000) to the Replacement Reserves. Such contributions are due on or before the anniversary of the Effective Date each year.

(o) Pool Use Requirements.

(i) No person, including a lifeguard, may enter the pool without another person present.

(ii) Whenever the pool is in use, the Party using the Pool is responsible for ensuring that a minimum of one (1) appropriate individual who possess, as minimum qualifications, current certificates from an American Red Cross or YMCA of the U.S.A. lifeguard training program and who are trained to administer first aid, including, but not limited to, cardiopulmonary resuscitation, must be on duty, present in the pool area and solely serving as a lifeguard, during that period, rather than involved in instruction and/or maintenance. City and District may agree to have City personnel perform lifeguard duties during District use, subject to reimbursement of direct costs by the District.

(iii) Each Party is responsible for compliance with all codes and regulations governing use of public swimming pools during their respective hours of use.

(iv) Each Party is responsible for providing or confirming the presence of a cardiopulmonary resuscitation sign, emergency phone numbers and any other signage required to be posted in the vicinity of a pool, as well as a phone, life hook, life ring and first aid kit in a readily accessible location during their respective hours of use.

(v) Each Party must completely remove the entire pool cover, regardless of whether the Party only uses a portion of the pool during their respective hours of use.

(vi) At the conclusion of each period of use, each Party is responsible for properly securing the pool covers of each pool used.

(p) Use Permits. The District and City may require third party users to submit use permits established by the respective Party. Use Permits must conform to the terms and conditions of this Agreement and must include language that requires the third-party user to indemnify both the District and City from claims resulting from the third parties' use of the Aquatic Center.

Section 6. Compliance With Law. Both Parties shall comply with all laws, ordinances, zoning, rules, and regulations applicable to the Property, including the Aquatics Center, enacted or promulgated by any public or governmental authority or agency having jurisdiction over the Property, including the Aquatics Center. Both Parties shall be responsible for obtaining and maintaining throughout the Term of the Agreement all permits, licenses and approvals, from any local, state or federal agency necessary for the use of the Property, including the Aquatics Center. Both Parties shall comply with requirements of state law regarding fingerprinting, background checks, and health screening, as applicable.

Section 7. Legal Interpretation of Instrument. The Parties expressly understand and agree that this Agreement constitutes a non-exclusive license for use of the Property, including the Aquatics Center. This Agreement is not intended by the Parties, nor shall it be legally construed, to convey a leasehold, easement, or other interest in real property. Both Parties acknowledge that a license is a valid form of agreement and shall not contest the validity of the form of this Agreement in any action or proceeding brought by City against the District, or by the District against City. Should either Party be compelled to institute arbitration, legal, or other proceedings against the other for or on account of the other Party's failure or refusal to perform or fulfill any of the covenants or conditions of this Agreement on its part to be performed or fulfilled, the Parties agree that the rules and principles applicable to licenses shall govern such actions or proceedings. This Agreement shall be governed by the laws of the State of California with venue in Los Angeles County, California.

Section 8. Dispute Resolution. The Parties agree to submit any dispute involving the Agreement to arbitration before any Party can file a petition with the Los Angeles Superior Court. 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"). The arbitration must be conducted in Los Angeles County, California. Any Party may be represented by counsel or other authorized representative. 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. 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.

Section 9. Attorneys' Fees. If any legal action is necessary to enforce any of the terms or conditions of this Agreement, each Party shall bear their own attorneys' fees, except as set forth above.

Section 10. Entire Agreement; Amendment. This Agreement and the Settlement Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof, and supersede all negotiations, prior discussions and preliminary agreements made prior to the dates thereof. This Agreement may not be changed except in writing executed by both Parties.

Section 11. Notices. Any notice, request, information or other document to be given hereunder to any of the Parties by any other parties shall be in writing and shall be deemed given and served upon delivery, if delivered personally, or three (3) days after mailing by United States mail as follows:

If to CITY: City of El Segundo
Attn: City Clerk
350 Main St.
El Segundo, CA 90245

If to DISTRICT: Wiseburn Unified School District
Attn: Superintendent
201 N. Douglas St.
El Segundo, CA 90245

Any Party may change the address or persons to which notices are to be sent to it by giving the written notice that such change of address or persons to the other Parties in the manner provided for giving notice.

Section 12. Official Representatives. The official representative for District shall be Superintendent, or his designee. The official representative for City shall be City Manager or his/her designee. The Parties will provide each other after-hours emergency contact phone numbers of appropriate supervisory staff which shall be periodically updated.

Section 13. Employees/Independent Contractors.

(a) For purposes of this Agreement, all persons employed by City in the performance of services and functions with respect to this Agreement shall be deemed employees of City and no City employee shall be considered as an employee of the District under the jurisdiction of District, nor shall such City employees have any District pension, civil service, or other status while an employee of the City.

(b) City shall have no authority to contract on behalf of District. It is expressly understood and agreed by both Parties hereto that City, while engaged in carrying out and complying with any terms of this Agreement, is not acting as an agent, officer, or employee of District.

(c) For purposes of this Agreement, all persons employed by District in the performance of services and functions with respect to this Agreement shall be deemed employees of District and no District employee shall be considered as an employee of the City under the jurisdiction of District, nor shall such District employees have any City pension, civil service, or other status while an employee of the City.

(d) District shall have no authority to contract on behalf of City. It is expressly understood and agreed by both Parties hereto that District, while engaged in carrying out and complying with any terms of this Agreement, is not acting as an agent, officer, or employee of City.

Section 14. Assignment. Neither Party shall assign this Agreement.

Section 15. Nondiscrimination. In utilizing the Agreement, the Parties shall comply with all applicable non-discrimination laws and shall not discriminate against any person on account of race, color, religion, age, sex, marital status, mental or physical disability, gender, gender identity, gender expression, sexual orientation, genetic information, ethnicity, ethnic group identification, national origin or nationality, ancestry, or a perception that a person has any of these characteristics or that the person is associated with a person who has, or is perceived to have, any of these characteristics.

Section 16. As-Is Condition. The Aquatics Center is licensed in as-is condition and District makes no representation or warranty of any kind regarding the character of the Aquatics Center. Notwithstanding the above, to the extent any portion of the Aquatics Center is under warranty from the contractor(s), District will coordinate with City to utilize any such warranty, as applicable.

Section 17. Exhibits. The following appendix which is attached hereto is incorporated herein and made a part of this Agreement:

Exhibit A: Location and Description of Property and Aquatics Center

Section 18. Recitals. The Recitals are incorporated into this Agreement as though fully set forth herein.

Section 19. Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other agreement between the District and City. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

Section 20. Ambiguities not to be Construed against Drafting Party. The doctrine that any ambiguity contained in a contract shall be construed against the party

whose counsel has drafted the contract is expressly waived by each of the Parties hereto with respect to this Agreement.

Section 21. Days/Holidays. All references to days herein shall refer to calendar days unless otherwise noted. When performance of an obligation or satisfaction of a condition set forth in this Agreement is required on or by a date that is a Saturday, Sunday, or legal holiday, such performance or satisfaction shall instead be required on or by the next business day following that Saturday, Sunday, or holiday, notwithstanding any other provisions of this Agreement.

Section 22. Nonliability of Officials. Except as otherwise explicitly provided by law, no officer, member, employee, agent, or representative of the Parties shall be personally liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon, shall be personally enforced against any such officer, official, member, employee, agent, or representative

Section 23. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not signatory to this Agreement

Section 24. Time of the Essence. Time is of the essence with respect to each of the terms, covenants, and conditions of this Agreement.

Section 25. Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

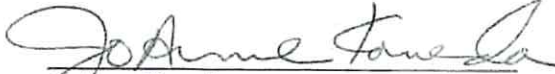
Section 26. No Affiliation/Endorsement. Neither Party shall imply, indicate or otherwise suggest that the other Party's use and/or any related activities are connected or affiliated with, or are endorsed, favored or supported by, or are opposed by the other Party.

Section 27. Board/Council Approval. This Agreement is not valid or an enforceable obligation against the District until approved or ratified by motion of the District's Board of Education duly passed and adopted. This Agreement is not valid or an enforceable obligation against the City until approved or ratified by motion of the City Council duly passed and adopted.

Section 28. Scanned/Electronic Signatures. This Agreement may be executed and transmitted to any other Party by PDF, which PDF shall be deemed to be, and utilized in all respects as, an original, wet-inked document.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

WISEBURN UNIFIED SCHOOL DISTRICT




JoAnne Kaneda,
Board President

ATTEST:



Blake Silvers,
Superintendent of Schools

CITY OF EL SEGUNDO

For 

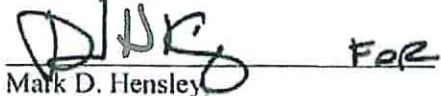
Drew Boyles,
Mayor

ATTEST:



Tracy Weaver,
City Clerk

APPROVED AS TO FORM:

 *FOR*

Mark D. Hensley,
City Attorney

Exhibit "A"

Description of Property and Aquatics Center

