

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF BEAUMONT
AND
THE BEAUMONT UNIFIED SCHOOL DISTRICT
FOR THE USE OF THE FACILITY AT BEAUMONT HIGH SCHOOL**

This Memorandum of Understanding (“MOU”) is by and between the CITY OF BEAUMONT (“City”), a California municipal corporation and public body, and the BEAUMONT UNIFIED SCHOOL DISTRICT (“District”), a school district organized and existing under the laws of the State of California. This MOU is entered into as of _____, 2024 (“Effective Date”), as a collaborative effort to create recreational opportunities at the District’s facilities. City and District are collectively referred to as “Parties” and individually as “Party”.

Nothing in this MOU shall be construed to intend that the Facility” (as defined below) is surplus to the needs of the District as defined in California Government Code Section 11011.

RECITALS

WHEREAS, the District is in legal control and possession of real property depicted in the attached **Exhibit A** (“Facility”) at Beaumont High School, 39139 Cherry Valley Blvd, Beaumont, CA 92223, which is capable of being used jointly by the Parties for recreational purposes;

WHEREAS, California law permits the Beaumont Unified School District Board of Trustees to grant the use of school buildings or grounds for public, literary, scientific, recreational, or educational meetings, or for the discussion of matters of general or public interest;

WHEREAS, District use of the Facility is generally during the school year with limited needs during the summer months and City needs are generally for the summer months;

WHEREAS, the District has limited funds for maintaining and improving the Facility and the City has limited land and resources for conducting City sponsored recreational programs;

WHEREAS, the Parties desire to use the Facility for community recreational purposes and enhance opportunities for recreational use and programs;

WHEREAS, the City has experience operating recreational facilities, including pools, of a similar scale or complexity and has demonstrated the skills, knowledge and experience necessary to supervise staff, including but not limited to lifeguards;

WHEREAS, pool use and swimming is permitted only under direct supervision of certified persons. At minimum, a valid lifeguard and/or water safety instructor certificate; with certification of CPR and First Aid must be on file with the District's office to be qualified to supervise swimmers;

WHEREAS, the District desires to have sole and exclusive use during school hours and priority use after school hours on days when school is in session. Use of school facilities will be permitted based on availability in relation to the District's instructional and sports leagues calendars; and

WHEREAS, the Parties now wish to establish one comprehensive agreement that addresses the Parties respective terms for Facility use.

NOW, THEREFORE, and in consideration of the above, the Parties hereby agree as follows:

1. Facilitron Online Reservation Portal System

Facilitron, the District's online reservation portal system, for the Facility includes Terms of Use applicable to the City's use of the Facility. These Terms of Use are located on the District's website at: <https://www.facilitron.com/busd92223>. The District herein incorporates the Terms of Use into this MOU. To the extent that there are conflicts or inconsistencies between the MOU and the Terms of Use, this MOU shall control.

2. Term and Termination

A. Term. The term of this MOU shall begin on the Effective Date and shall end on August 7, 2024, unless the term of this MOU is otherwise terminated or extended as provided in this MOU.

B. Termination. Either Party may terminate this MOU with or without cause upon sixty (60) days' advance written notice to the other Party.

3. Rights and Obligations of the Parties

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

1) **Staffing**. The City shall be responsible, at its own cost, for recruiting, selecting, training and employing suitable, properly trained and

licensed/certificated staff needed to sufficiently supervise the Facility, including lifeguards, water safety instructors, and community service staff. All appointed candidates for employment for City aquatics programs at the Facility must pass (1) a drug and alcohol screening, (2) a tuberculosis (TB) screening, and (3) background check prior to appointment. All water safety staff and lifeguards selected by the City must have completed, and remain in good standing with, all certifications required by the American Lifeguard Association or the American Red Cross as the national certifying agencies for lifeguards. The City will ensure that a sufficient number of water safety staff and lifeguards are supervising City aquatics programs at all times, as specified in the most recent American Red Cross Lifeguarding Manual. To the extent the District, in its reasonable discretion, becomes concerned about the suitability of staff or supervision for City use and reasonably believes that the unsuitability could endanger the safety of persons or property, it may at any time suspend City use of the Facility immediately, until assurances acceptable to District staff, in their reasonable discretion, can be made by the City satisfying District safety concerns.

- 2) **Emergency Action Plan.** The City will develop and adopt emergency action plan(s) for the Facility, including site maps and the specific location of necessary safety equipment. Maps and other information regarding the location and use of such equipment will be made available to the City upon request pursuant to this MOU. To the extent the District, in its reasonable discretion, becomes concerned about the suitability of emergency action plans or other safety-related components of the City use, and reasonably believes that the unsuitability could endanger the safety of persons or property, it may at any time suspend City use of the Facility immediately, until assurances acceptable to District staff, in their reasonable discretion, can be made by the City satisfying District safety concerns. City shall notify the District as soon as practicable regarding an emergency at the Facility.
- 3) **City Facility Use Fee.** The City shall reimburse the District pursuant to **Exhibit B** ("City Facility Use Fee"). Requests for payment of the City Facility Use Fee shall be submitted by the District to the City for reimbursement within a reasonable time, and shall be payable within thirty (30) days of City receipt thereof. All or portions of City Facility Use Fees reasonably in dispute may be withheld until resolution of the underlying dispute.
- 4) **Maintenance, Repair, and Cleaning.** The City shall return the Facility and associated equipment to the District, after each use, in substantially the same state in which it is received, ordinary wear and tear excepted. Damages or discrepancies observed by District staff

attributable to the City's use of Facility under this MOU shall be reported to the City within a reasonable time, not to exceed sixty (60) days. The City shall review damage reports for appropriateness and shall reimburse the District for damages not reasonably in dispute within thirty (30) days of receipt of such reports. The City is not responsible for damages caused by the District's neglect or misuse or by natural disaster. The City will immediately report any damage, needed repair, unsafe condition or maintenance issue to the District upon discovery.

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

- 1) **Maintenance, Repair, and Cleaning.** Except as otherwise set forth hereunder, the District agrees to provide all routine maintenance required for the Facility. City staff will be provided with an on-call name and contact information for District staff that can respond to requests for emergency repairs occurring outside of the hours of 6:00 am to 2:30 pm on weekdays. The City, in its reasonable discretion, can review a necessary repair to determine whether City use can occur safely notwithstanding the need for repair, and, may elect to either (1) contact District staff for an emergency repair, (2) operate the use (if safe) notwithstanding the repair, or (3) postpone or cancel the City use until the routine repair can be made during regular business hours. In the event the City requires an emergency repair, the District will charge the City direct labor and materials costs for repairs incurred outside of regular business hours. Labor and materials costs will not be charged to City for repairs made during regular business hours. Costs incurred for repair required during non-regular business hours shall be invoiced to the City for reimbursement within a reasonable period of time not to exceed sixty (60) days. Reimbursement requests shall be submitted by the District to the City, and amounts not reasonably in dispute shall be payable within thirty (30) days of City receipt thereof.
- 2) **Pool Use and Schedule, City Usage Times.** The Parties currently agree to the proposed use schedule and class descriptions in **Exhibit C** attached hereto. The City's use shall be reserved solely through Facilitron, unless otherwise agreed to in writing between the Parties.
- 3) **Emergency or Repair Closures.** In the event the District in its reasonable discretion requires to close the Facility due to reasons outside of the District's reasonable control, or for repairs which require such closure, the District shall notify the City as soon as practicable, and the City shall comply with the District's direction to cancel or postpone City use. In the event of a closure under this

Paragraph, no City Facility Use Fee shall be due to the District for times when the Facility is not available for the City's use. In the event of a closure under this Paragraph, the Parties shall meet and confer in good faith regarding rescheduling or relocation of the cancelled City use.

- C. Cooperation and Noninterference. The Parties shall use best efforts to cooperate to accomplish the purposes of this MOU. Neither Party shall unreasonably interfere with the other Party's rights or obligations under this MOU. To the extent the rights and obligations hereunder involve performance of a specific or specialized activity or program, neither Party shall conduct competitive activities or programs at a time, in a location, or in a manner which may reasonably be expected to discourage participation in or otherwise detract from the activity or program conducted pursuant to the rights and obligations of the other Party. Notwithstanding the foregoing, District reserves the right to have employee(s) at the Facility during City's use to monitor the use and ensure the City complies with the terms of this MOU. In the event that the police department determines that its presence is required at the Facility for City's use or event, City shall be solely responsible for complying with such request; provided, however, that District agrees to cooperate if necessary.
- D. Materials and Equipment. Except as otherwise stated in this MOU, each Party shall provide all materials and equipment, including, but not limited to, safety flotation devices or kickboards, as may be necessary for that Party's performance hereunder, at that Party's sole cost and expense. .
- E. Access to Facility. Unless otherwise stated, the rights of use or access granted pursuant to this MOU shall apply to the officers, employees, subcontractors, agents, and volunteers of the applicable Party provided that such persons shall be subject to the terms and conditions of this MOU. City is only permitted to enter District property to the extent necessary to effectuate the performance of this MOU. City shall comply with all applicable security and safety procedures, protocols, and practices required by the District. Access to District facilities is not permitted unless otherwise approved in accordance with the procedures provided in this MOU.
- F. Compliance with Law. Each Party shall, at its sole expense, comply with all local, state, and federal laws and regulations applicable to the performance of this MOU, including obtaining and maintaining any required approval or permit necessary therefor. Each Party is independently responsible for reviewing and complying with all applicable laws.
- G. Modifications to Facility. City shall make no modifications nor construct any improvements to the Facility without advance written consent from the District, in its sole discretion.

H. Substances. No alcoholic beverages or illegal substances will be permitted at the Facility.

4. **City Insurance**

City shall provide to District certificates of public liability insurance and property damage insurance in not less than the following amounts:

Bodily Injury Liability \$2,000,000 each occurrence
Bodily Injury Liability \$4,000,000 aggregate
Property Damage Liability \$2,000,000 each occurrence
Property Damage Liability \$4,000,000 aggregate

City shall provide to District a current and valid Certificate of Insurance naming the District as an additional insured in said public liability and property damage insurance policy. Said public liability insurance shall be placed with admitted insurers in California with a rating of "A" or better from the current Best Rating Guide.]

5. **Indemnification**

The City agrees to defend, indemnify and hold harmless the District, its board of trustees, agents and employees, individually and collectively, from and against any and all costs, losses, claims, actions, court costs, attorneys fees, and judgments arising from personal injuries, property damage or otherwise that may arise out of or in connection with the City's negligence, recklessness or willful misconduct while using or occupying the Facility, furniture or equipment, , including but not limited to:

- A. Death or bodily injury to a persons, loss of or injury of property, or any loss, damage or expense which may have been sustained by the District or any persons, firm or corporation employed by the District or in connection with the activity called for in this MOU, except such injuries, losses, damages or expense to the extent caused by the negligence, recklessness or willful misconduct by the District or any persons, firms, corporations or contractors employed by, or contracted with the District.
- B. Any injury to or death of persons or damage of property, any loss or theft sustained by persons, firms or corporations, including the City, arising from any act of neglect, default omission, negligence or willful misconduct of the City, its members, agents, or any person, firm or corporation employed by the City, either directly or by independent contract, spectators, participants or guests attributable in connection with the activity covered by this MOU, on or off District property. The City, as its own expense, cost, and risk, shall defend any and all actions, suits or other proceedings that may be brought or instituted against the District, its board, officers, agents, or employees and shall pay or satisfy and such claim, demand, liability or judgment rendered against the District, its board, officers, agents, or employees in any action, suit or other

proceedings as result of, or arising out of the activity called for in this MOU, except for such actions, suits, proceedings, demands, liability, judgment, injuries, losses, damages or expense to the extent arising out of or caused by the negligence, recklessness or willful misconduct by the District or any persons, firm, corporation or contractor employed by, or contracted with, the District.

6. Notices

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

To City:	To District:
[Name], [Title] 550 E. 6th Street Beaumont, CA 92223	Anazele Gonzalez, Director of Facilities 350 Brookside Ave. Beaumont, CA 92223

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

7. Remedies and Breach

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

8. Subcontract and Assignment

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

9. Survival

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

9. Applicable Law and Venue

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

10. Attorneys' Fees

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

11. Severability

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

12. Waiver

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

13. Successors and Assigns

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

14. Captions

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

15. Entire Agreement

This MOU, including the exhibits and any all documents referenced herein constitute the entire agreement of the Parties and supersede all prior negotiations and agreements whether written or oral.

16. Construction

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

17. Amendments

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

18. No Third-Party Beneficiaries

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

19. Nondiscrimination

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

20. Authority to Execute

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

21. Counterparts

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

CITY OF BEAUMONT

BEAUMONT UNIFIED SCHOOL DISTRICT

By: _____
Elizabeth Gibbs
City Manager

By: _____
[Mays Kakish]
[Superintendent]

Dated: _____

Dated: _____

Exhibit A

THE FACILITY

Beaumont High School Pool

39139 Cherry Valley Blvd, Beaumont, CA 92223

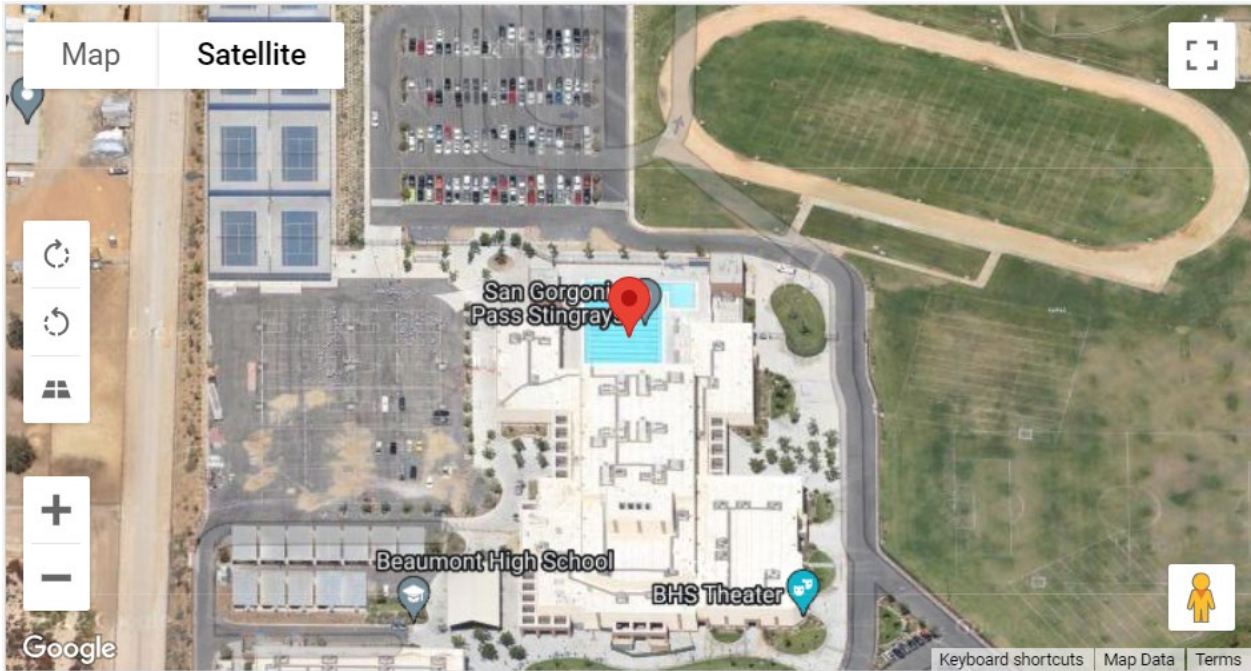


Exhibit B

**FACILITY USE
PERSONNEL FEES**

Position	Hourly Rate Including Fixed Costs
Custodian	56.92
Pool Maintenance Worker	56.38

Exhibit C

PROPOSED USE SCHEDULE AND CLASS DESCRIPTIONS

WATER AEROBICS

- The two days girls water polo isn't practicing
- 60-minute sessions
- Ages 18+
- Limit 15 per class

SWIM LESSONS

- Monday – Thursday
- 30-minute sessions
- 2 weeks long
- Limit 8 per class

Time	Aerobics	Parent & Me	Preschool	Level 1	Level 2	Level 3	Level 4
7:00 a.m.	•						
8:00 a.m.		•	•				
8:40 a.m.		•		•			
3:30 p.m.				•		•	
4:10 p.m.					•		•
4:50 p.m.				•		•	
5:30 p.m.			•		•		•
6:00 p.m.	•				•		

JUNE:

AM Water Aerobics – two days girls polo aren't playing.
 No AM swim lessons (all lessons are four days a week)

JULY:

Water Aerobics Monday – Thursday
 AM and PM lessons Monday – Thursday

Each class needs an instructor and a lifeguard assigned to that class.

CLASS DESCRIPTIONS

Parent & Me – Parent and child are required to participate in the water together. Emphasis on fun in the water through guided practice sessions that help the child learn elementary skills including water entry, bubble blowing, front kicking, back kicking, underwater exploration and more.

Preschool (Starfish) – Introduction to independent pool safety, water entry and exit and basic swimming skills such as: kicking, bubble blowing, floating and underwater exploration.

Level 1 (Seahorse)- Introduction to in-water safety skills such as water entry and exit, fully submerged face, jumping, kicking, arm movement, breath control, supported floating, rolling over and personal safety.

Level 2 (Turtles) – Students will learn to float without support and recover to a vertical position, glides, front arm motion, back arm motion, flutter kicks and rhythmic breathing.

Level 3 (Otters) – Students will learn to combine and coordinate arm motion, leg motion and rhythmic breathing, diving from the side of pool, back crawl, elements of breaststroke and fundamentals of treading water.

Level 4 (Stingrays) – Students develop confidence in strokes, increase swimming endurance, build on breaststroke and learn sidestroke and elements of butterfly.

510-5/6912342.1