



1           3.     Hours of Use. The specific hours of District use of the Aquatic Facilities have  
2 been determined and agreed upon by the City’s Aquatic Supervisor and the District. The Hourly  
3 School Program Schedule may be adjusted only upon written notice to the Aquatic Supervisor.  
4 The District may, upon reasonable notice, request permission for use of the Aquatic Facilities for  
5 additional hours, and the City shall grant such permission based on the availability of the Aquatic  
6 Facilities.

7  
8           4.     Rent. The District shall pay the City \$40.00 per hour for use of the Aquatic  
9 Facilities for the term of this Agreement. The District shall pay the City an additional fee for  
10 rental and use of City classroom facilities at the Recreation Center, at a rate of \$20.00 per hour.  
11 The rental rates for subsequent years shall be determined at the annual meeting in March, before  
12 the following school year.

13  
14           5.     City Responsibilities. The City shall:

15  
16           A.     Provide a minimum of two lifeguards for all hours the Aquatic Facility is  
17 used by the District. The role of the City lifeguards shall be to support District personnel’s  
18 enforcement of Aquatic Facility rules and to respond to emergencies requiring lifesaving  
19 assistance.

20  
21           B.     Provide for the operation and maintenance of the Aquatic Facility in  
22 conjunction with its operation, maintenance and repair of the Recreation Center, and to make  
23 necessary repairs.

24  
25           C.     Be responsible for the initial purchase in 2011 of lane lines, flags, and  
26 basic swim training equipment, and be responsible for maintaining and repairing the equipment  
27 permanently installed in the Aquatics Facility such as lane lines, flags and starting blocks.

28  
29           D.     Provide a copy of the City’s Aquatics Facility Rules and Regulations, and  
30 any amendments to the District Athletic Director for the use by the District.

31  
32           6.     District Responsibilities. The District shall:

33  
34           A.     Provide supervisory personnel for all District aquatic activities. The  
35 District has lead responsibility for the safety of its students, staff, athletes, event volunteers, and  
36 spectators at the events while they are using the Aquatic Facility. For the purposes of this  
37 Agreement, the term “personnel” means all officers, employees, agents, contractors, volunteers  
38 or any other person acting under the authority of the District.

39  
40           B.     Ensure that all District personnel with on-site supervision and/or  
41 responsibility for the various school aquatic programs shall have current lifeguard training  
42 certification, current CPR certification and current first aid certification. District personnel  
43 acting as dive coaches must be certified US Diving Safety Training for Competitive Diving  
44 Coaches, which certification may substitute for lifeguard training. District personnel acting as  
45 swim coaches must be certified United States Swimming Safety Training for Swim Coaches, or

1 WIAA swimcoach certification may substitute for lifeguard training. Such certifications shall  
2 be obtained prior to use of the Aquatic Facility.

3  
4 In the event that coaches are employed by the District just prior to the start of the season, the  
5 City will allow 60 days to obtain certifications, provided that certifications shall be obtained and  
6 provided to the City during the first season of employment with the District, and further  
7 provided that there is at least one coach on site with all required certifications.

8  
9 C. Provide City with copies of all required certifications before use of the  
10 Aquatic Facility, and assume sole responsibility for ensuring compliance with subsection B.

11  
12 D. The District shall assume all responsibility for conduct of all student  
13 athletes, coaches and event staff at District aquatic activities, and interscholastic practices and  
14 meets.

15  
16 E. District personnel shall read Aquatic Facility Rules and Regulations and  
17 shall acknowledge the rules and regulations by signing the rules and regulations document  
18 provided by City.

19  
20 F. Inform out-of-District personnel of Aquatic Facility Rules and Regulations  
21 prior to out-of-District use of Facility.

22  
23 G. The District shall inspect the Aquatic Facility prior to all swim activities,  
24 practices and meets to determine the fitness of the Facility for the District activity. District shall  
25 immediately report and inform City of any conditions of concern regarding the fitness of the  
26 Facility and equipment for District's use prior to using Facility. This obligation is independent  
27 of and in addition to the City's responsibilities in paragraphs 5B and 5C of this Agreement.

28  
29 H. The District shall bear all responsibility for the use of the physical facility  
30 as relates to the District activity and shall indemnify and hold the City harmless for such use as  
31 set forth in Paragraph 9 of this Agreement.

32  
33 I. The District agrees to pay for all damages to City-owned property  
34 resulting from the District's activities conducted at the City-owned Aquatic Facility. Further, the  
35 District agrees to return City-owned property to the City in the same or better condition, minus  
36 reasonable wear and tear, at the conclusion of the District's use of the Aquatic Facility.

37  
38 J. Conclude all regularly scheduled swim meets by 5:00 p.m. at which time  
39 City swim lesson programming will promptly begin.

40  
41  
42 7. Safety Regulations. The District programs shall be conducted in conformance  
43 with all applicable safety and health regulations adopted by the State of Washington as now  
44 enacted or as hereinafter amended and with all City of Lynnwood Aquatic Facility Rules and  
45 Regulations. The District assumes full responsibility for ensuring compliance with this  
46 Paragraph.

1  
2 In the event the City has closed the Aquatic Facility to public use for necessary repairs,  
3 maintenance, or resulting from the District's failure to meet the responsibilities outlined in this  
4 agreement, the City has the right to suspend District use of the facility. The City shall promptly  
5 notify the District Athletic Director and seek resolution.  
6

7 8. Equipment. The District shall provide equipment necessary for District aquatics  
8 programs, except when the City provides equipment for use in the District's programs.  
9 Equipment used exclusively by the District may be stored on City property during the boys and  
10 girls swim team seasons only, with prior verbal agreement by both parties each season.  
11 Designated representatives of both parties shall meet annually prior to the City's and District's  
12 budgeting processes to discuss purchase, repair and replacement of expendable and permanently  
13 installed equipment.  
14

15 Expendable equipment owned by the City and used by the District, shall include kickboards,  
16 hand paddles, and pull buoys. The City shall budget for and purchase the expendable equipment  
17 listed above, at no additional cost to the District.  
18

19 The City and the District shall together at a meeting in March mutually determine the need for  
20 repair and replacement of permanently installed equipment. Permanently installed equipment  
21 shall include lane lines, flags and starting blocks. The City and the District shall share in the  
22 costs for expenditures related to the purchase, replacement and re-installation of such  
23 permanently installed equipment. The City shall obtain cost estimates for repair and replacement  
24 of permanently installed equipment and shall provide an annual accounting of the hours of  
25 District use as a percentage of total use and report to the District. The District shall reimburse the  
26 City for the District's proportionate share of all sums expended for purchase, replacement and  
27 repair of such equipment. The District's share shall be mutually determined at the annual  
28 meeting, and shall be based on the percentage of District use of the equipment when compared to  
29 the overall public use of the equipment, not to exceed 50% of the overall use and cost.  
30 Permanently installed equipment shall become the property of the City.  
31

32 9. District Indemnity and Hold Harmless.  
33

34 A. The District shall protect, defend, and hold harmless the City of  
35 Lynnwood, its officers, officials, employees, and agents, from any and all claims, demands, suits,  
36 penalties, losses, damages, judgments, attorneys' fees and/or costs of any kind whatsoever, from  
37 claims arising out of or in any way resulting from acts or omissions of the District, its officers,  
38 officials, employees, students, volunteers, agents and/or subcontractors, in the District's use of  
39 facilities owned by the City of Lynnwood that are the subject of this Agreement.  
40

41 B. The District's obligations under this section shall include, but are not  
42 limited to:  
43

44 (1) The duty to promptly accept tender of defense and provide defense  
45 to the City at the District's own expense;  
46

1 (2) Indemnification for such claims arising from the sole negligence of  
2 the District. The District's indemnity shall not extend to the sole negligence of the City.  
3

4 (3) The duty to indemnify and defend the City from any claim,  
5 demand, and/or cause of action brought by or on behalf of any of the District's employees or  
6 agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the  
7 District's immunity under Washington's Industrial Insurance Act, Chapter 51 RCW, as respects  
8 the City of Lynnwood only, and only to the extent necessary to provide the City of Lynnwood  
9 with a full and complete indemnity and defense of claims made by the District's employees.  
10

11 C. In the event that the City of Lynnwood incurs attorney fees and/or costs in  
12 the defense of claims for damages within the scope of this section arising from the sole  
13 negligence of the District, such fees and costs shall be recoverable from the District in  
14 accordance with this Agreement. In addition, in the event it becomes necessary for either party  
15 to seek enforcement of this Agreement, the prevailing party shall be entitled to recover attorneys'  
16 fees and costs incurred to enforce this Agreement from the non-prevailing party.  
17

18 10. District Liability Coverage.  
19

20 A. Nature of Coverage. The District shall maintain commercial general  
21 liability coverage or shall obtain a coverage agreement approved by the City, and attached to this  
22 Agreement, through a Risk Pool authorized by Chapter 39.34 RCW which shall provide liability  
23 coverage to the District and the City for the liabilities arising from this Agreement, and arising  
24 out of the activities pertaining to this Agreement. By requiring such liability coverage, the City  
25 of Lynnwood shall not be deemed to, or construed to, have assessed the risks that may be  
26 applicable to the District in this Agreement. The District shall assess its own risks and, if it  
27 deems appropriate and/or prudent, maintain greater limits or broader coverage than is herein  
28 specified.  
29

30 B. Scope and Limits of Liability Coverage.

31 (1) Commercial General Bodily Injury and Property Damage  
32 Insurance or equivalent coverage through the Risk Pool shall be written with limits of liability of  
33 no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 in aggregate and  
34 shall include coverage for:

- 35 Premises & Operations
- 36 Contractual liability (including specifically liability assumed herein)
- 37 Broad Form Property Damage
- 38 Commercial Form (to include Extended Bodily Injury)
- 39 Independent Contractors
- 40 Personal Injury
- 41 Stop Gap
- 42 Cross liability clause
- 43

44 (2) Automobile Bodily Injury and Property Damage Insurance or  
45 equivalent coverage through the Risk Pool shall be written with limits of liability for limits of not  
46 less than \$1,000,000 combined single limit per occurrence and shall include coverage for:

- 1 All owned automobiles
- 2 Non-Owned automobiles
- 3 Hired Automobiles
- 4 Any automobiles

5  
6 (3) Umbrella Liability Insurance or equivalent coverage through the  
7 Risk Pool shall be written on a following form basis with limits of in no case less than  
8 \$15,000,000.

9  
10 (4) Bodily Injury Liability Insurance or equivalent coverage through  
11 the Risk Pool shall be written on an occurrence basis for bodily injury, sickness or disease,  
12 including death resulting from death.

13  
14 (5) Property Damage Liability Insurance or equivalent coverage  
15 through the Risk Pool shall be written on an occurrence basis for damage to or destruction of  
16 property, including the loss of use thereof.

17  
18 (6) Workers' Compensation coverage as required be the Industrial  
19 Insurance Act of the State of Washington, Title 51 RCW, and statutory limits.

20  
21 C. Deductibles and Self-insured Retentions. Any deductible and/or self-  
22 insured retention shall be the sole responsibility of the District.

23  
24 D. Other Provisions. The coverages required by this Agreement are to  
25 contain or be endorsed to contain the following provisions where applicable.

26  
27 (1) Liability Coverages. The District's liability coverage shall be  
28 primary coverage as respects the City of Lynnwood, its officers, officials, employees, and agents.  
29 In the event of District negligence, any insurance and/or self-insurance maintained by the City of  
30 Lynnwood, its officers, officials, employees and agents shall not contribute with the District's  
31 coverage or benefit the District in any way.

32  
33 (2) All Policies and Coverage Agreements. Coverage shall not be  
34 suspended, voided, canceled, materially reduced in coverage or in limits except by the reduction  
35 of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written  
36 notice, sent by registered mail, has been given to the City of Lynnwood.

37  
38 (3) Acceptability of Insurers. Unless otherwise accepted by the City  
39 of Lynnwood, insurance coverage is to be placed with a Risk Pool authorized by Chapter 39.34  
40 RCW or insurers with a Best's rating of no less than A: VIII, or, if not rated by Best's, with a  
41 minimum surplus the equivalent of Best's surplus size VIII.

42  
43 (4) Verification of Coverage and Additional Named Insured. The  
44 District shall furnish the City with certificates of coverage. The certificates for each policy or  
45 coverage agreement are to be signed by a person authorized to bind coverage. If the District  
46 obtains commercial general liability insurance, the certificates shall include the Additional

1 Named Insured Endorsement, naming the City of Lynnwood as a Primary additional named  
2 insured. The certificates are to be received and accepted by the City of Lynnwood prior to the  
3 commencement of activities associated with this Agreement. If the District obtains coverage  
4 through the Risk Pool, the District agrees to defend and indemnify the City for any and all claims  
5 that are a result of District use of the facility, in the same manner as if the District had purchased  
6 liability insurance with the City as additional named insured.

7  
8 11. City Indemnity and Hold Harmless.

9 A. The City shall protect, defend, and hold harmless the District, its officers,  
10 officials, employees, and agents, from any and all claims, demands, suits, penalties, losses,  
11 damages, judgments, attorneys' fees and/or costs of any kind whatsoever, from claims arising  
12 out of or in any way resulting from acts or omissions of the City, its officers, officials,  
13 employees, students, volunteers, agents and/or subcontractors, in the District's use of facilities  
14 owned by the City of Lynnwood that are the subject of this Agreement.

15  
16 B. The City's obligations under this section shall include, but are not limited  
17 to:

18  
19 (1) The duty to promptly accept tender of defense and provide defense  
20 to the District at the City's own expense;

21  
22 (2) Indemnification for such claims arising from the sole negligence of  
23 the City. The City's indemnity shall not extend to the sole negligence of the District.

24  
25 (3) The duty to indemnify and defend the District from any claim,  
26 demand, and/or cause of action brought by or on behalf of any of the City's employees or agents.  
27 The foregoing duty is specifically and expressly intended to constitute a waiver of the City's  
28 immunity under Washington's Industrial Insurance Act, Chapter 51 RCW, as respects the  
29 District only, and only to the extent necessary to provide the District with a full and complete  
30 indemnity and defense of claims made by the City's employees.

31  
32 C. In the event that the District incurs attorney fees and/or costs in the  
33 defense of claims for damages within the scope of this section arising from the sole negligence of  
34 the City, such fees and costs shall be recoverable from the City in accordance with this  
35 Agreement. In addition, in the event it becomes necessary for either party to seek enforcement  
36 of this Agreement, the prevailing party shall be entitled to recover attorneys' fees and costs  
37 incurred to enforce this Agreement from the non-prevailing party.

38  
39 12. Non-waiver. Failure of the City to insist on strict performance of the terms,  
40 agreements and conditions herein contained, or any of them, shall not constitute or be construed  
41 as a waiver or relinquishment of the City's right thereafter to insist on compliance with any such  
42 term, agreement, or condition, but the same shall continue in full force and effect.

43  
44 13. Termination. This Aquatic Facilities Use Agreement may be terminated by the  
45 City or by the District upon written notice to the other party at least one hundred twenty (120)  
46 days in advance of the intended termination date.

1  
2 14. Assignment. Neither party shall assign or sublet its rights or responsibilities  
3 under this Agreement without the written authorization of the other party. Written authorization  
4 shall not be unreasonably withheld.  
5

6 15. Notice. Each notice or communication which may be or is required to be given  
7 under this Agreement shall be in writing and shall be deemed to have been properly given when  
8 delivered personally during the normal business hours to the party to whom such communication  
9 is directed or three working (3) days after being sent by regular mail, to the appropriate one of  
10 the following address as may be designated by the appropriate party:  
11

12 CITY OF LYNNWOOD	EDMONDS SCHOOL DISTRICT
13 Parks, Recreation & Cultural Arts Department	20420 68 <sup>th</sup> Ave. W.
14 18900 44 <sup>th</sup> Ave. W.	Lynnwood, WA 98036-7000
15 Lynnwood, WA 98036	
16 PO BOX 5008	
17 Lynnwood, WA 98046-5008	ATTN: Athletic Director
18 ATTN: Recreation Superintendent	
19	

20 16. Dispute Resolution. If either party claims that the other party has breached any  
21 term of this Agreement, the following procedures shall be followed if and when informal  
22 communications, such as telephone conversations, fail to satisfy the claiming party, or one of the  
23 parties elects to trigger the dispute resolution process at any time, in the event of disputes or  
24 disagreements concerning programming or uses:  
25

26 A. The claiming party's Designated Representative shall provide a written  
27 notice to the other party's representative of the alleged breach. The notice shall identify the act  
28 or omission at issue and the specific term(s) of the Agreement which the complaining party  
29 alleges was violated.  
30

31 B. The responding party's Designated Representative shall respond to the  
32 notice in writing within fifteen (15) working days. The response shall state that party's position  
33 as well as what, if any, corrective action the responding party agrees to take.  
34

35 C. The complaining party shall reply in writing, indicating either satisfaction  
36 or dissatisfaction with the response. If satisfied, any corrective action shall be taken within  
37 fourteen (14) working days of receipt of the responding party's reply unless otherwise mutually  
38 agreed. If dissatisfied, the complaining party shall call an in-person meeting. The meeting shall  
39 occur within a reasonable period of time and shall be attended by the Designated Representatives  
40 of each party, and such others as they individually invite.  
41

42 D. If the complaining party remains dissatisfied with the results of the  
43 meeting, it shall then refer the matter to the District Superintendent and Mayor, or their  
44 designees, for resolution. If the issue is not resolved at this level within thirty (30) days, then  
45 either party may require in writing that the matter shall be reviewed in a non-binding, structured  
46 mediation process developed on a cooperative basis by the parties and the parties shall consider



1 in good faith any recommendations or settlements arising from such process. All of the steps  
2 preceding shall be a prerequisite to either party suing under this Agreement for breach, specific  
3 performance, or any other relief related to this Agreement.  
4

5 E. Each party shall designate a person who shall be responsible for handling  
6 the administrative needs with respect to their use of the above referenced Aquatic Facilities. The  
7 City's Designated Representative is the Aquatics Supervisor. The District's Designated  
8 Representative is Athletic Director.  
9

10 17. Integration. This writing contains all terms of this Agreement. It replaces all  
11 prior negotiations and agreements regarding the use of the City's Aquatic Facilities.  
12 Modifications must be in writing and be signed by each party's authorized representative.  
13

14 18. Severability. If any term of this Agreement is held invalid or unenforceable, the  
15 remainder of the Agreement will not be affected but continue in full force.  
16

17  
18 CITY OF LYNNWOOD

EDMONDS SCHOOL DISTRICT NO. 15

19  
20  
21 \_\_\_\_\_  
22 Don Gough  
23 Mayor

\_\_\_\_\_

Marla Miller  
Executive Director,  
Business and Operations

24  
25  
26  
27 Approved as to form:  
28  
29  
30

31 \_\_\_\_\_  
32 Rosemary Larsen, City Attorney