

**MASTER AGREEMENT BETWEEN THE CITY OF MANHATTAN BEACH AND MANHATTAN BEACH UNIFIED SCHOOL DISTRICT FOR THE PROVISION, USE AND MAINTENANCE OF EDUCATIONAL, RECREATIONAL AND COMMUNITY FACILITIES AND PROGRAMS FOR THE FISCAL YEARS 2013-2014 THROUGH 2015-16**

THIS MASTER AGREEMENT for the provision, use and maintenance of educational, recreational and community facilities ("Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ by and between the CITY OF MANHATTAN BEACH, a municipal corporation ("City"), and the MANHATTAN BEACH UNIFIED SCHOOL DISTRICT, a public school district duly organized under the laws of the State of California ("District"). City and District may be referred to as "parties" herein.

**RECITALS**

A. Pursuant to the provisions of Title 1, Division 1, Part 7, Chapter 10 of the California Education Code (commencing with section 10900), Title 1, Division 7, Chapter 5, Article 1 of the California Government Code (commencing with section 6500), and section 37110.5 of the California Government Code, the City and the District are authorized to enter into an agreement providing for educational, recreational, and community facilities and programs.

B. The District is able and willing to provide the City with the use of valuable educational and recreational facilities for use by the City in carrying out its programs for the benefit of its residents, including but not limited to, athletic fields, playgrounds, play yards and play equipment, tennis courts, outdoor basketball courts, racket courts, swimming facilities, auditoriums, gymnasiums, classrooms, cafeterias, labs, multipurpose rooms, meeting rooms and open space.

C. The foregoing facilities and programs will allow the City to provide its residents with a level and breadth of services that it would not otherwise be able to provide.

D. The purpose of this Agreement is to establish a framework setting forth the basic terms applicable to the City's use of the District's properties and facilities.

E. It is the desire of the District and the City, upon the express terms and conditions set forth in this Agreement, to establish specific terms and conditions for specific properties and facilities for the mutual benefit and use of each party, pursuant to the terms set forth herein.

F. The District and the City acknowledge that this Agreement is being entered into by each party for the mutual benefit of each.

G. It is in the public interest that the City and the District enter into this Agreement in order to maximize the use of the District's facilities and programs for the promotion of the general public welfare. The City Council and the District's Board of Education hereby determine and find that the payments and services provided to the District are for a public purpose for matters within the jurisdiction of the City Council and the Board of Education. The terms and conditions of this Agreement serve a direct and substantial public purpose.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the District hereby agree as follows:

**Section 1. Definitions.** Unless otherwise provided in this Agreement, including its exhibits, the following terms shall be defined as set forth below:

“City Manager”: City Manager for the City.

“City Sanctioned”: Approved by the City Manager or his/her designee.

“Director”: Manhattan Beach Director of Parks and Recreation or his/her designee.

“District Facilities”: means and includes the following facilities, fields, recreational courts and related parking facilities, as further described in Exhibits A-F:

- (1) Begg Field,
- (2) Manhattan Beach Middle School Fields,
- (3) Pacific School Athletic Field,
- (4) Center Athletic Field located at Pacific School,
- (5) Grand View School Athletic Field,
- (6) Robinson School Athletic Field,
- (7) Meadows School Athletic Field,
- (8) Pennekamp School Athletic Field,
- (9) Mira Costa High School Athletic Fields (excluding Waller Field),
- (10) Mira Costa Tennis Court,
- (11) Mira Costa Pool,
- (12) Begg Swimming Pool,
- (13) The property known as Polliwog Park and Premier Field, and
- (14) Exterior courts at District sites (e.g. basketball, tennis and racket courts).

“Educational Activities”: Those activities that are (1) classroom instruction; (2) extracurricular activities supervised by the District, whether or not provided in a classroom; or (3) other activities of students, faculty and administrative staff directly related to classroom instruction and extracurricular activities at each school approved by the Superintendent or designee.

“Non-School Hours” or “Usage Period”: Weekdays beginning two (2) hours after classes regularly scheduled or District-supervised after-school programs are dismissed (or earlier, with the prior written permission of the District regarding a particular location and event), weekends, holidays observed by the District, and extended school breaks, including but not limited to, winter recess, spring recess and summer recess.

**Section 2. Term of Agreement.** The term of this Agreement is July 1, 2013 through June 30, 2016 (“Term”), unless otherwise terminated pursuant to Section 12.

**Section 3. District Facilities.** Depictions of District Facilities that are the subject of this Agreement are attached hereto as Exhibit A.

**Section 4. Grant and Covenant.** The District hereby grants to the City a license to use District facilities subject to the general terms set forth in this Agreement, and the specific terms which may be set forth in subsequent, site-specific agreements.

**Section 5. District Obligations to Make Available Facilities.**

The District shall make the District Facilities available to the City subject to the terms of this Agreement.

A. Restriction on Use. The City has no right to use and shall not permit the District Facilities to be used for a purpose or in a manner that:

1. Is not legal;
2. Is not a use for which the District Facilities were designed; or
3. Is prohibited by the District’s insurance policies.

B. Permits for City Employees and Officials. The District has set up a system of permits to allow non-District residents to enroll students for instruction at District schools. City employees shall have priority in the granting of such permits to the extent permitted by State law and in accordance with District Board Policy No. 5117 and Administrative Regulation No. 5117.

**C. Site Specific Terms and Conditions.**

1. The parties previously developed site specific agreements for the City’s use of District Facilities identified below. The terms of such site specific agreements have been incorporated, amended and restated in the Exhibits described below. This Agreement, including the Exhibits, supersedes the former site specific agreements:

a) Athletic Fields and Facilities. Exhibit B provides for use by the City, subject to site specific terms and conditions, of the following athletic fields, facilities and related parking facilities: (1) Begg Field, (2) Manhattan Beach Middle School Fields, (3) Pacific School Athletic Field, (4) Center Athletic Field located at Pacific School, (5) Grand View School Athletic Field, (6) Robinson School Athletic Field, (7) Meadows School Athletic Field, (8) Pennekamp School Athletic Field, (9) Mira Costa High School Athletic Fields.

b) Begg Swimming Pool. Exhibit C provides for use by the City, subject to site specific terms and conditions, of Begg Swimming Pool.

c) Mira Costa Tennis Courts. Exhibit D provides for use by the City, subject to site specific terms and conditions, of the Mira Costa Tennis Courts.

d) Polliwog Park and Premiere Field. Exhibit E provides for use by the City, subject to site specific terms and conditions, of Polliwog Park and Premier Field.

2. In addition to the facilities that were previously governed by site specific agreements, the City may use the following District Facilities, subject to the terms of this Agreement:

a) Exterior Courts. Basketball, tennis and racket courts shall be treated as District Facilities subject to the terms and conditions of Exhibit B.

b) Mira Costa Pool. Exhibit F provides for use by the City, subject to specific terms and conditions, of the pool located at Mira Costa High School.

3. District's Maintenance and Operations Facility. The City's Facility Strategic Plan dated April 2008 identifies the portion of Polliwog Park known as the District's Maintenance and Operations Facility as a key site for recreational facilities and open space. The parties will negotiate in good faith with the goal of executing a comprehensive agreement as to the City's use of the Maintenance and Operations Facility.

4. To the extent that any provision in any Exhibit or any site specific agreement the parties may execute in the future conflicts with any provision in the body of this Agreement, the provisions in the body of this Agreement shall prevail unless the terms of such site specific agreement expressly states that the site specific agreement shall prevail notwithstanding this Section. The parties may enter into additional site specific agreements and any such agreements shall be subject to all provisions in this Agreement as if expressly stated in that specific agreement.

D. General Use of District Facilities. From time to time, the City may need the use of District's facilities, or portions thereof, other than those specified herein. In such instances, the City shall submit its request for such use in writing to the District. The District shall consider such request and may deny the request if the District determines, in its sole discretion, that the requested use would interfere with District activities or Civic Center Act uses, would result in the use of District facilities on a State or Federal Holiday, or would damage District facilities because such facilities were not designed to accommodate the proposed use. The parties agree that requested uses under this provision will be for one time uses of the requested District facilities. If an ongoing use of a District facility is requested by the City, the parties shall negotiate and amend this Agreement to set forth the terms and conditions under which such ongoing use of a District facility would be permitted. The parties agree that the City Manager or his representative and the District Superintendent or his representative must mutually agree as to the use of any District facility under the terms of this provision.

**E. Public Safety Training Exercises and Use of Facilities During Emergencies.**

1. At least twice each year, on a Saturday or Sunday as mutually agreed upon by the parties, the City shall have exclusive use of the parking facilities, driveways and other similar large open asphalt areas as well as other District facilities as requested by the City for public safety training exercises; provided, however, that such use shall be scheduled so that it does not interfere with District activities.

2. In the case of a declared local, state or federal emergency, the District shall use its best efforts to allow the use of District facilities for the sheltering of persons and any other use related to the emergency.

3. In connection with any such emergency, the District and the City shall coordinate with regard to locating emergency containers at each of the District school sites. The District shall provide a location on each campus that is acceptable to the City in size and location. The City shall remove the emergency containers within 24 hours after the declared emergency no longer exists. Under no circumstances shall the emergency containers remain on District property year round.

**F. Tour of District Facilities.** During the month of July or August of each year during the Term on a date and time mutually agreeable to the parties, the District shall provide to the City Manager and other staff designated by the City a tour of District facilities.

**Section 6. City Obligations.** In consideration for the City's use and the District's provision of the facilities and programs as described herein, the City shall provide to the District the following compensation:

**A. Annual Payment for Use of District Facilities.** During the Term, the City shall make an annual payment to the District of \$550,000 for City use of District Facilities. The annual payment shall be increased annually on the anniversary of July 1 for each year during the Term by an inflation factor percentage that will be calculated by taking the change in the Consumer Price Index for all Urban Consumers for the Los Angeles-Riverside-Orange County Metropolitan Area, or its successor ("CPI-U"), from May of the previous calendar year to May of the then current calendar year. In no event shall such increase exceed \$15,000 in any one year. The City shall pay such annual payment in four quarterly payments made on August 1, November 1, February 1, and May 1 of each year during the Term. The District shall submit a written invoice requesting payment at least thirty (30) days prior to each quarterly payment date. The City may elect, in its sole discretion, to prepay one or more of the required quarterly payments. Upon receiving written notice from the District that the District has determined that, due to current financial limitations, a prepayment of one or more of the quarterly payments would be beneficial to avoid an adverse effect on the quality or level of facilities and programs provided by the District hereunder, the City shall consider the District's request to make such prepayment. Such notice shall describe the current financial limitations affecting the District.

**B. Maintenance of District Athletic Fields.** The City shall maintain the athletic field components of the District Facilities ("Maintenance") in accordance with the maintenance standards applied at City owned athletic fields (the "Maintenance Standards").

C. Resurfacing of Hardscape. Commencing in the 2014-2015 fiscal year, the City will incorporate the hardscape and associated parking lots shown on Exhibit A in its periodic resurfacing and slurry seal program, at no cost to the District.

D. Improvements to District Facilities. The City Manager or designee and the District Superintendent or designee shall meet, when necessary, to discuss additional improvements to District Facilities. Upon written agreement of the City and the District, the City may make additional agreed upon improvements to some or all of the District Facilities. Any improvements to be made to any of the District Facilities will be pursuant to plans and specifications reasonably approved by the District and the City.

**Section 7. Annual Field Closures.** The District and the City agree that in order to obtain maximum use from District Facilities, annual field closures must occur to allow for necessary field refurbishment. By July 1 of each year during the Term of this Agreement, the City will submit to the District an "Annual Field Maintenance Closure Schedule" ("Schedule") showing the requested closure periods, indicated by closing and opening dates and by field name. The District will review the schedule and submit requested revisions within thirty (30) days of receipt of the Schedule. If no revisions are received by the City within the thirty (30) day period, the Schedule will be in force from September 1 to August 31 of the following year. If the District disagrees with the Schedule, the City and the District will negotiate a revised Schedule. If a satisfactory agreement regarding field closures for maintenance cannot be made, the City will make reasonable efforts to maintain the fields pursuant to the terms of this Agreement as set forth in the Exhibits but shall be relieved of its obligation to meet the Maintenance Standards to the extent that meeting those standards would reasonably require periodic field closures.

**Section 8. Rules and Regulations.** The City may formulate and enforce such rules and regulations that apply to its use of District Facilities as are appropriate to conduct its activities. The City shall not permit any person or organization to use District Facilities where such use is inconsistent with Education Code Sections 10900 through 10915 and Section 40044 and other applicable laws.

### **Section 9. Annual Report and Meeting.**

#### **A. Accountability and Audit.**

1. It is in the best interest of the public if the benefits of this Agreement are well understood. The parties agree that the District shall include and clearly acknowledge in its annual budget the payments made to the District under this Agreement as a separate line item in that budget.

2. The District shall maintain records of accounts maintained by the District for the receipt and disbursement of any funds received in connection with this Agreement according to accepted government accounting principles, which records shall be available to the City for audit. The District shall allow a representative of the City to examine, audit and make transcripts or copies of such records during regular business hours upon notice to the District by the City. The District shall provide the City with its full cooperation in any audit or request for examination of records.

B. Annual Meeting. The City Manager and the District Superintendent shall conduct an annual meeting no later than June 1 of each year during the Term to ensure compliance with this Agreement and to discuss issues such as whether certain facilities should be added to or deleted from this Agreement. At or prior to that annual meeting, the District shall provide the City with a list of uses prohibited by the District's insurance policies so that the City may comply with Section 5.A.3 above.

## **Section 10. Insurance.**

A. During the Term, the City shall maintain, at its own expense, general liability insurance or self-insurance that governs its use of District Facilities in the minimum amount of \$5,000,000 per occurrence. To the extent that the City does not self-insure to meet this obligation, the City shall evidence the existence of proper insurance by sending an appropriate certificate of coverage to the District, which shall provide for ten (10) days' advance notice to the District prior to cancellation or alteration of such coverage and name the District as an additional insured. The insurance afforded by this policy shall be primary and any other insurance carried by the District with respect to the matters covered by such policy shall be excess and non-contributing.

B. During the term of this Agreement, the District shall maintain, at its own expense, general liability insurance or self-insurance with respect to District Facilities in the minimum amount of \$5,000,000 per occurrence. To the extent that the District does not self-insure to meet this obligation, the District shall evidence the existence of proper insurance by sending an appropriate certificate of coverage to the City, which shall provide for ten (10) days' advance notice to the City prior to cancellation or alteration of such coverage and name the City as an additional insured. The insurance afforded by this policy is primary and any other insurance carried by the City with respect to the matters covered by such policy shall be excess and non-contributing.

C. In the event the City subcontracts the maintenance of District Facilities to a third party (the "Subcontractor"), the City shall require that the Subcontractor have the following forms of insurance coverage:

1. Liability Insurance. The Subcontractor shall procure a policy of liability insurance with a company listed in the current A.M. Best's Insurance Guide with a rating of B+ or better, which company is authorized to do business in the State of California, and which policy will protect the District against any and all liability for death, injury, loss, or damage to person or property arising out of or in any manner incident to the Subcontractor's operations under any contract with the City for the maintenance of District Facilities. Such policy of insurance shall contain not less than \$1,000,000 combined single limit coverage per occurrence and \$3,000,000 aggregate against any injury, death, loss, or damage as a result of wrongful or negligent acts or omissions by the Subcontractor.

2. Workers' Compensation Insurance. The Subcontractor at all times shall keep and maintain workers' compensation insurance, at its own expense, for all persons employed by it, in connection with the maintenance contract as required by California law and any other applicable laws, and shall hold the District harmless from all liability that may arise by

reason of injuries while performing any work or labor necessary to carry out the provisions of this Agreement. The Subcontractor shall, during the life of its maintenance contract, keep on file with the District evidence that the Subcontractor is fully and properly insured as required by California Workers' Compensation insurance laws and any other applicable laws, which insurance shall be approved by the District as to form and sufficiency.

3. The Subcontractor shall deliver a certificate of insurance coverage to the District evidencing the existence of such coverage before such Subcontractor commences activity at any District Facility and such policy shall name the City and the District as additional insureds on the policy of general liability. The general liability policy shall provide the following endorsement:

"This policy shall not be suspended, canceled, reduced in coverage or required limits of liability or amounts of insurance or non-renewed until notice has been mailed to the Manhattan Beach Unified School District, at 325 South Peck Road, Manhattan Beach, California 90266. Date of suspension, cancellation, reduction in coverage or non-renewal shall not be less than 10 days after the date of mailing of such notice. The insurance afforded by this policy is primary and any other insurance carried by the City or Manhattan Beach Unified School District with respect to the matters covered by such policy shall be excess and noncontributing."

4. The Subcontractor shall pay, at its own expense, all premiums upon the required policies of insurance and shall maintain the same in full force and effect during the period in which the Subcontractor performs work on District Facilities. The procuring of such policies of insurance shall not be construed as a limitation of the Subcontractor's liability; the Subcontractor's liability being, notwithstanding said policy of insurance, for the full and total amount of any damage, injury, or loss caused by or incident to the Subcontractor's operations under the applicable contract.

E. The obligations created by this Section shall survive the termination of this Agreement for actions occurring while the Agreement was in effect.

## **Section 11. Indemnification.**

A. Pursuant to Government Code Section 895.4, the District agrees to indemnify, defend and hold harmless the City, the City Council and each member thereof, and every officer, employee and agent of the City, from all claims, suits or actions of every name, kind and description, including attorney fees and costs, brought for or on account of injury (as defined in Government Code Section 810.8) arising from the acts or omissions of the District in connection with its obligations and performance under this Agreement.

B. Pursuant to Government Code Section 895.4, the City agrees to indemnify, defend and hold harmless the District, the Board and each member thereof, and every officer, employee and agent of the Board, from all claims, suits or actions of every name, kind and description, including attorney fees and costs, brought for or on account of injury (as defined in Government Code Section 810.8) arising from the acts or omissions of the City in connection with its obligations and performance under this Agreement.

C. This Section shall survive the expiration or earlier termination of this Agreement.

**Section 12. City and District's Right to Terminate.**

A. The District shall have the right, upon giving the City twelve (12) months' advance written notice, to terminate this Agreement with respect to all or a portion of each of the District Facilities.

B. The City shall have the right, upon giving the District twelve (12) months' advance written notice, to terminate this Agreement with respect to all or a portion of each of the District Facilities.

**Section 13. Surrender.**

The City shall, on or before the expiration date of this Agreement, or on the earlier termination of this Agreement, peaceably and quietly leave, surrender and yield up unto the District the District Facilities, together with all alterations, additions and improvements which may have been made upon the District Facilities.

**Section 14. Assignment.**

A. Except as otherwise provided for herein, the City may permit only City Sanctioned events at District Facilities, and may not otherwise assign all or any portion of its rights hereunder or delegate any of its duties hereunder, without the prior written consent of the District, not to be unreasonably withheld. Any purported assignment or delegation in violation of this Section is void ab initio.

B. Notwithstanding Section 14.A, the City may permit or license third parties to use District Facilities, without further approval by the District provided that such use complies with the terms of this Agreement.

C. The City covenants and agrees that no assignment or transfer of its right to use District Facilities as created herein shall relieve the City of any of its covenants or obligations accruing after such assignment or transfer, but the City shall remain obligated under this Agreement for the duration of the Term hereof, unless the District provides the City with a written release of the City's obligations under this Agreement. In all events, the obligations of the City to indemnify, defend and hold harmless the District in accordance with Section 11 will survive the termination of this Agreement.

**Section 15. Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restriction, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, or other occurrences beyond the reasonable control of the party obligated to perform any term, covenant or condition of this Agreement, shall excuse the performance by such party, for a period equal to any such prevention, delay or stoppage, provided that the obligated party could not have avoided such delay through the exercise of due diligence, and provided further that the obligated party

notifies the other party within a reasonable time after the obligated party becomes aware that such occurrence will or is likely to result in such prevention, delay, or stoppage.

## **Section 16. Dispute Resolution.**

A. In the event of any dispute or claim between the parties arising out of this Agreement, or the breach or interpretation thereof, the parties shall attempt to resolve such dispute or claim, in the following order:

1. Good faith negotiation
2. Mediation
3. Binding Arbitration.

B. Mediation. If good faith negotiation does not resolve the dispute or claim, the parties shall try in good faith to settle the dispute through mediation administered by the Judicial Arbitration and Mediation Service (“JAMS”) located in Los Angeles County, California, prior to either party initiating against the other a demand for binding arbitration pursuant to the provisions and procedures set forth in Section C below.

1. Request for Mediation and Selection of Mediator.

The party requesting mediation shall deliver a written request to mediate the dispute to the other party to this Agreement and to JAMS. The request shall include a brief statement of the party’s claim, the amount thereof, and the name of the proposed retired judge from JAMS to mediate the dispute. Within ten (10) days after the request for mediation, the other party against whom the request is made shall deliver a written response to the demanding party and to JAMS. The response shall include a short and plain statement of the party’s defenses to the claim and shall also state whether the party agrees to the mediator chosen by the requesting party. In the event the parties cannot agree upon a mediator within thirty (30) days after the request for mediation, JAMS shall select and name a mediator to conduct the mediation.

2. Venue.

The place of the mediation shall be in Los Angeles County, California.

3. Time Limitations.

If the dispute is not resolved within sixty (60) days after the initiation of mediation, either party may demand binding arbitration in accordance with the procedures and provisions of Section C below.

## **C. Binding Arbitration.**

In the event a dispute under this Agreement is not resolved within sixty (60) days after the initiation of mediation, either party thereafter seeking binding arbitration shall deliver a written notice of demand of arbitration to the other party and to JAMS. The demand shall

include a brief statement of the party's claim, the amount thereof, and the name of the proposed retired judge from JAMS to decide the dispute. The party demanding arbitration may request that the JAMS mediator serve as the arbitrator. Within ten (10) days after receipt of the demand, the other party against whom a demand is made shall deliver a written response to the demanding party and JAMS. The response shall include a short and plain statement of the party's defenses to the claim and shall also state whether the party agrees to the arbitrator chosen by the demanding party. In the event the parties cannot agree upon an arbitrator within thirty (30) days after the receipt of the demand, JAMS shall select and name an arbitrator to conduct the hearings.

1.     Venue.

The place of the arbitration shall be in Los Angeles County, California.

2.     Discovery.

Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the other with copies of documents relevant to the issues raised by any claim or counterclaim on which the producing party may rely in support of or in opposition to any claim or defense. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrator, whose determination shall be conclusive. All discovery shall be completed within forty-five (45) days following the appointment of the arbitrator.

3.     Powers of the Arbitrator.

The arbitrator's powers shall be limited as follows: The arbitrator shall follow the substantive laws of the State of California, including rules of evidence, and the terms of this Agreement. The arbitrator's decision shall be supported by substantial evidence. The arbitrator shall have no power, authority or jurisdiction to award any punitive or exemplary damages, but may award attorneys' fees to the prevailing party.

4.     Third Parties.

In the event any person or entity which is not a party to this Agreement is necessary for the complete and final resolution of any matter in controversy under this Agreement, such third party may be joined as a party. If such third party refuses to consent to be included in the arbitration between the parties to this Agreement by consolidation, joinder or any other manner, then the parties to this Agreement shall not be compelled to arbitrate such dispute.

5.     Timing of Award.

The award shall be made within six (6) months of the filing of the notice of intention to arbitrate (demand) and no later than thirty (30) days after the closing of the arbitration hearing. The arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be shortened or extended by agreement of the parties or by the arbitrator, if necessary.

6. Judgment upon Award.

Upon the request of either party, judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction.

**Section 17. Source of Funds.** Expenditures by the City under this Agreement shall be appropriated from monies in the City's General Fund, provided that no funds shall be expended which are derived from property taxes. Further, no funds expended under this Agreement shall be derived from assessments based on the value of property within the City or from any monies appropriated by the State of California.

**Section 18. Loss of Use of District Facilities.** If any of the District Facilities shall be so damaged by fire, casualty or other cause or happening as to be rendered unusable, or if any authority having jurisdiction shall order the demolition or removal of any District Facilities, then as to those facilities, this Agreement shall cease and become null and void. The District shall have no obligation to restore said facilities or put them in proper condition for use and occupancy. The City and the District, however, agree that if said facilities are not restored or placed in proper condition for use and occupancy, that the annual payment provided herein may be reduced by a sum that quantifies the loss of such use as reasonably determined by the City after consultation with the District.

**Section 19. Co-Administrators.** The City Manager, or the City Manager's designee, and the District's Superintendent or the Superintendent's designee, are hereby designated as the co-administrators of this Agreement subject to the rights and obligations set forth herein and subject to the direction of their respective governing agencies.

**Section 20. Loss of Funding.** If this Agreement is terminated for any reason prior to the expiration of its Term, the payments specified herein for that remaining portion of the Agreement, calculated to the nearest calendar month, shall also be cancelled. Any portion of said payments already paid by the City to the District, for any period during which this Agreement is no longer in effect, shall be calculated to the nearest calendar month and shall be reimbursed to the City by the District.

**Section 21. Reimbursement of Funds.** In the event a court of competent jurisdiction holds that any money paid to the District under this Agreement has been expended by the City without proper authority and the court holds either that the money must be refunded to the City by the District and/or individual members of the City Council are personally liable to the City for any such expenditures, the District shall reimburse the City and/or individual members of the City Council for any such payments up to the amount specified in the judgment, but not to exceed the total payments already made by the City under this Agreement. Such reimbursement shall be limited to payments made in the most recent three years of the term of this Agreement unless a court has determined that city officials may be liable for repayment for a period in excess of three years. This Section shall survive the expiration or earlier termination of this Agreement.

## **Section 22. Miscellaneous.**

### **A. Emergency Contacts (24-Hour Messaging).**

District:

Paul Ruta	(310) 748-5601
Jeff Mullikin	(310) 748-5620

City:	(310) 802-5170
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**B. Notice.** Any notice which is required or permitted to be given by any provisions of this Agreement, may be given by hand delivery, by any overnight courier service providing dated evidence of delivery, or by U.S. Certified mail return receipt requested. Each notice shall be addressed as follows:

If to the City:                   City of Manhattan Beach  
   1400 Highland Avenue  
   Manhattan Beach, California 90266  
   Attn: City Manager

with a copy to:                   Richards, Watson & Gershon  
   355 South Grand Avenue  
   40th Floor  
   Los Angeles, California 90071  
   Attn. Manhattan Beach City Attorney

If to the District:               Manhattan Beach Unified School District  
   325 South Peck Avenue  
   Manhattan Beach, California 90266  
   Attn: Superintendent

with a copy to:                   Dannis Woliver Kelley  
   301 East Ocean Boulevard, Suite 1750  
   Long Beach, California 90802  
   Attn: Samuel R. Santana

The City and the District may each designate different addresses for the receipt of notice by delivering notice of any such change of address to the other party. Notices shall be deemed given as of the date of delivery.

**C. Counterparts.** This Agreement may be executed in any number of counterparts, each which shall be deemed an original but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this Agreement attached thereto.

D. Applicable Law. This Agreement's interpretation and implementation shall be governed by the laws of the State of California and any questions arising hereunder shall be construed and determined according to such laws.

E. Headings. Headings at the beginning of each numbered section of this Agreement are solely for the convenience of the parties and are not a part of this Agreement.

F. Time. Time is of the essence in this Agreement.

G. Entire Agreement, Amendments and Extensions.

1. This Agreement is the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all other agreements between the parties with respect to the matters contained in this Agreement, including the site specific agreements referenced in Section 5.C and any other site specific agreements related to District Facilities entered into prior to May 1, 2013. Any waiver, modification, consent or acquiescence with respect to any provisions of this Agreement shall be set forth in writing and duly executed on behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

2. Any amendments, modifications or variations from the terms of this Agreement shall be in writing and shall be effective only upon approval of such amendment, modification or variation by the Council of the City and the Board of Education of the District.

3. The City and the District shall make reasonable efforts to commence discussions no later than January 1, 2016 regarding whether the Term of this Agreement shall be extended. The decision to extend the Term of this Agreement shall be mutually agreed upon by the parties. Nothing contained in this Agreement shall be construed to require either the City or the District to extend the Term of the Agreement or to enter into a new agreement.

H. No Other Inducement. There have been no representations, statements, warranties or agreements other than those expressly set forth herein that induced the making, execution and delivery of this Agreement by the parties.

I. Exhibits. All Exhibits attached hereto are incorporated herein by this reference.

J. Severability Clause. If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, only those invalid provisions shall cease and become null and void. Should either party determine that the exclusion of those provisions render the Agreement contrary to the intent of the parties, the City and the District shall use their best efforts to restructure the Agreement consistent with the original intent of the parties. If the City and the District are unable to agree on a restructuring of the Agreement after utilizing their best efforts, this Agreement shall become null and void upon thirty (30) days' written notice, and at the election of, either party hereto.

K. Successors. This Agreement shall be binding upon the assignees, transferees, and successors in interest of both the City and the District.

L. Conflicts of Laws. As between the City and the District, in the administration of this Agreement, in the event that there is a conflict in the laws that govern the City and the laws that govern the District, the parties shall take such actions as necessary to comply all of the laws that govern either party.

M. Interpretation of Agreement. The terms of this Agreement 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 Agreement or any other rule of construction which might otherwise apply. The section headings are for purposes of convenience only.

N. Attorneys' Fees. In the event the parties undertake arbitration, the prevailing party shall be entitled to recover its costs, including all attorneys' fees incurred in connection with such arbitration.

O. Compliance with Law. In performing its obligations under this Agreement, each party shall undertake its respective activities in compliance with all applicable local, state and federal laws.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement as of the date first written above.

ATTEST:

CITY OF MANHATTAN BEACH,  
a municipal corporation

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Liza Tamura, City Clerk

By: \_\_\_\_\_  
David N. Carmany, City Manager

APPROVED AS TO FORM:

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Quinn M. Barrow  
City Attorney  
City of Manhattan Beach

MANHATTAN BEACH UNIFIED SCHOOL  
DISTRICT,  
a public school district duly organized under the  
laws of the State of California

By: \_\_\_\_\_  
Ida VandaPoorte  
President of the Board of Trustees

APPROVED AS TO FORM:

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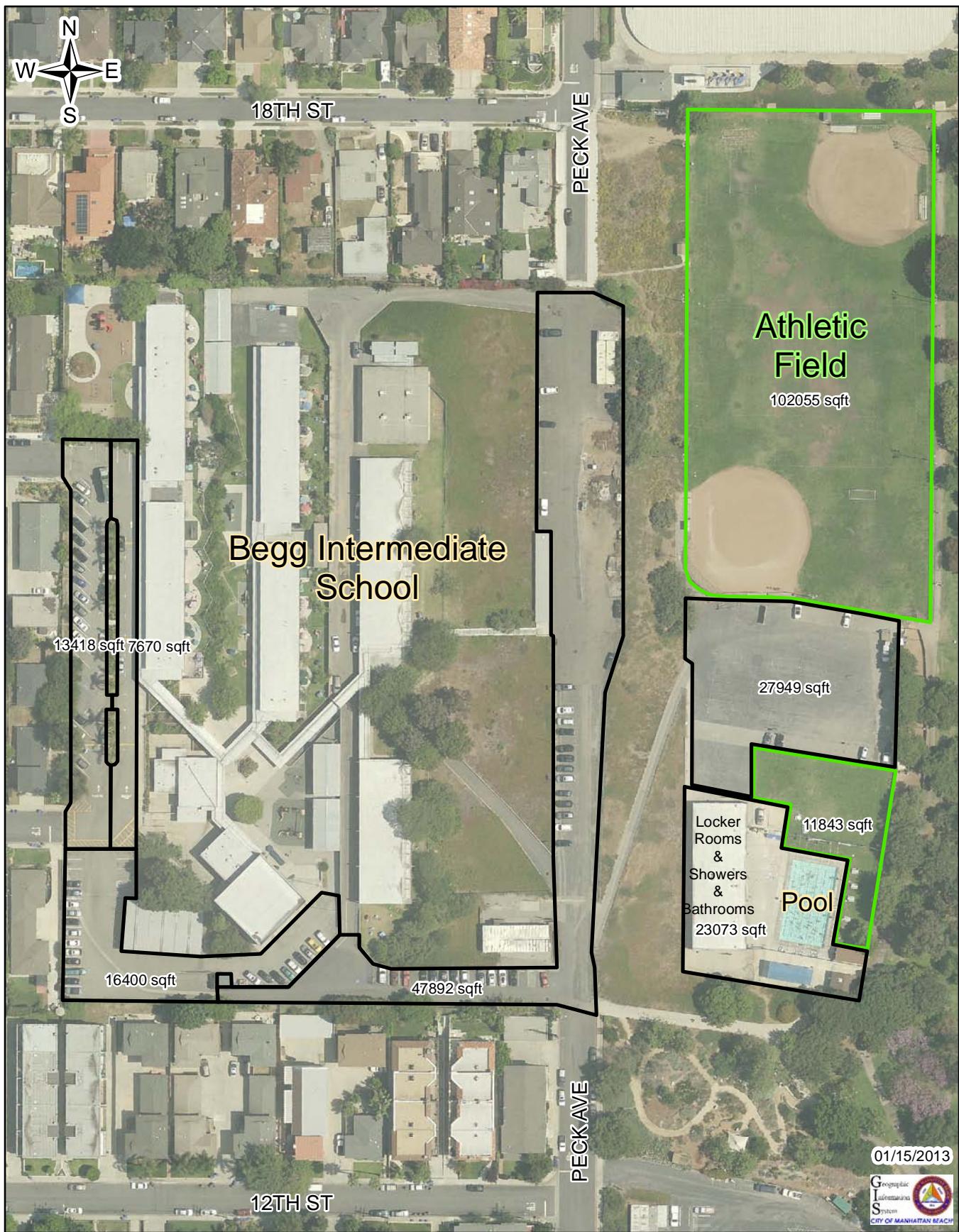
District Counsel  
Manhattan Beach Unified School District

**EXHIBIT A**

**MAPS**

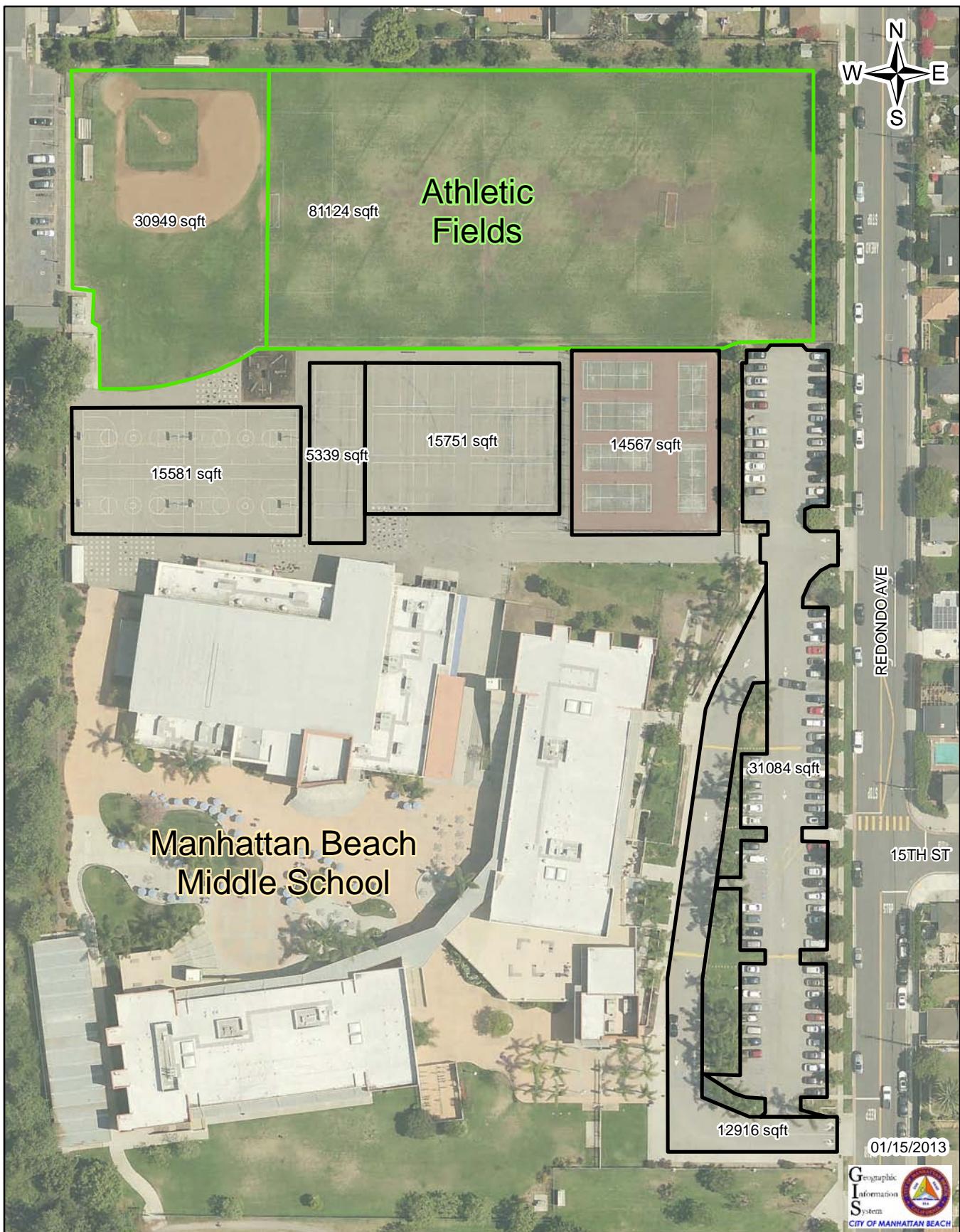
# BEGG FIELD & POOL

1 inch = 125 feet



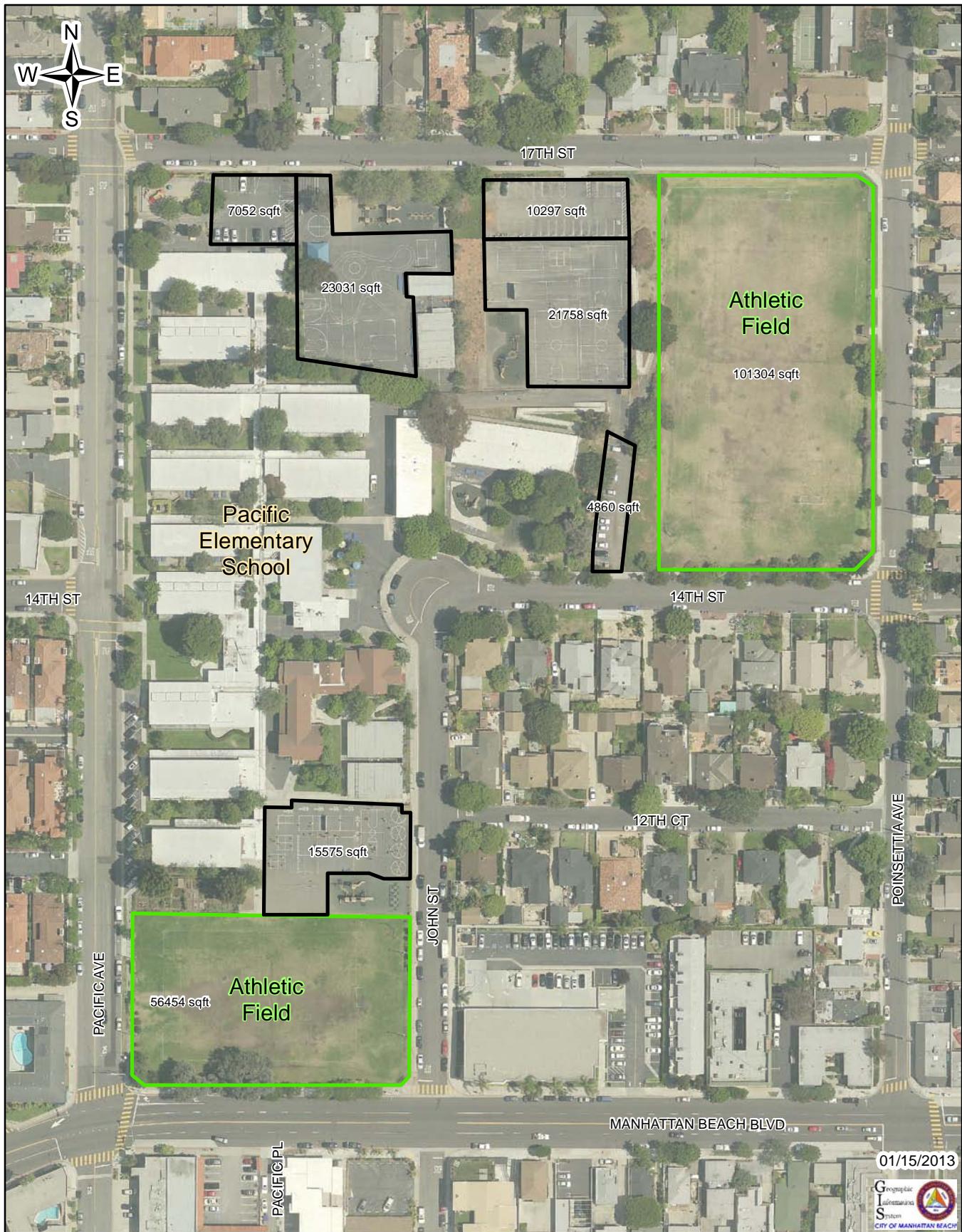
# M.B. MIDDLE SCHOOL

1 inch = 100 feet



# PACIFIC SCHOOL

1 inch = 150 feet



# GRAND VIEW SCHOOL

1 inch = 150 feet



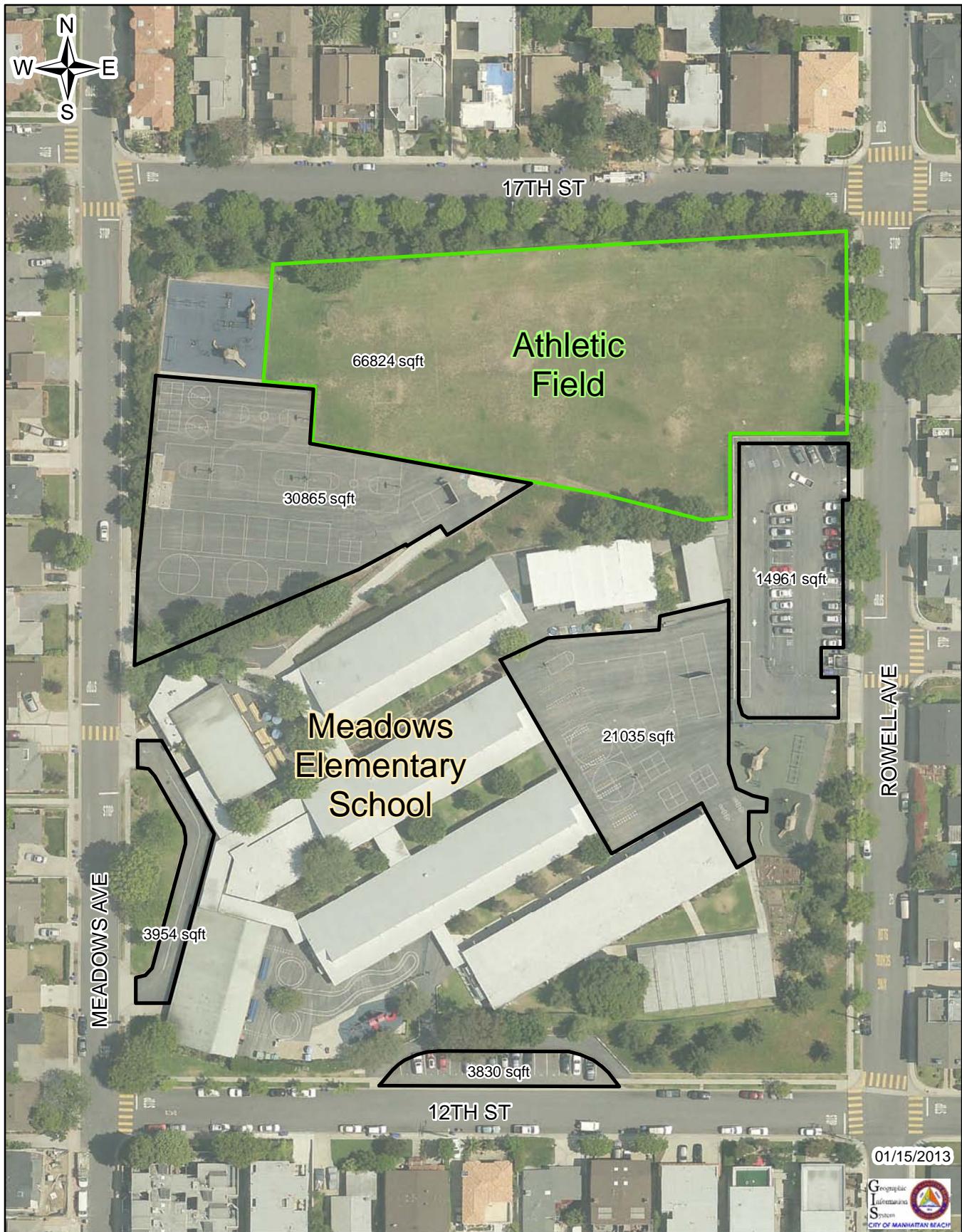
# ROBINSON SCHOOL

1 inch = 125 feet



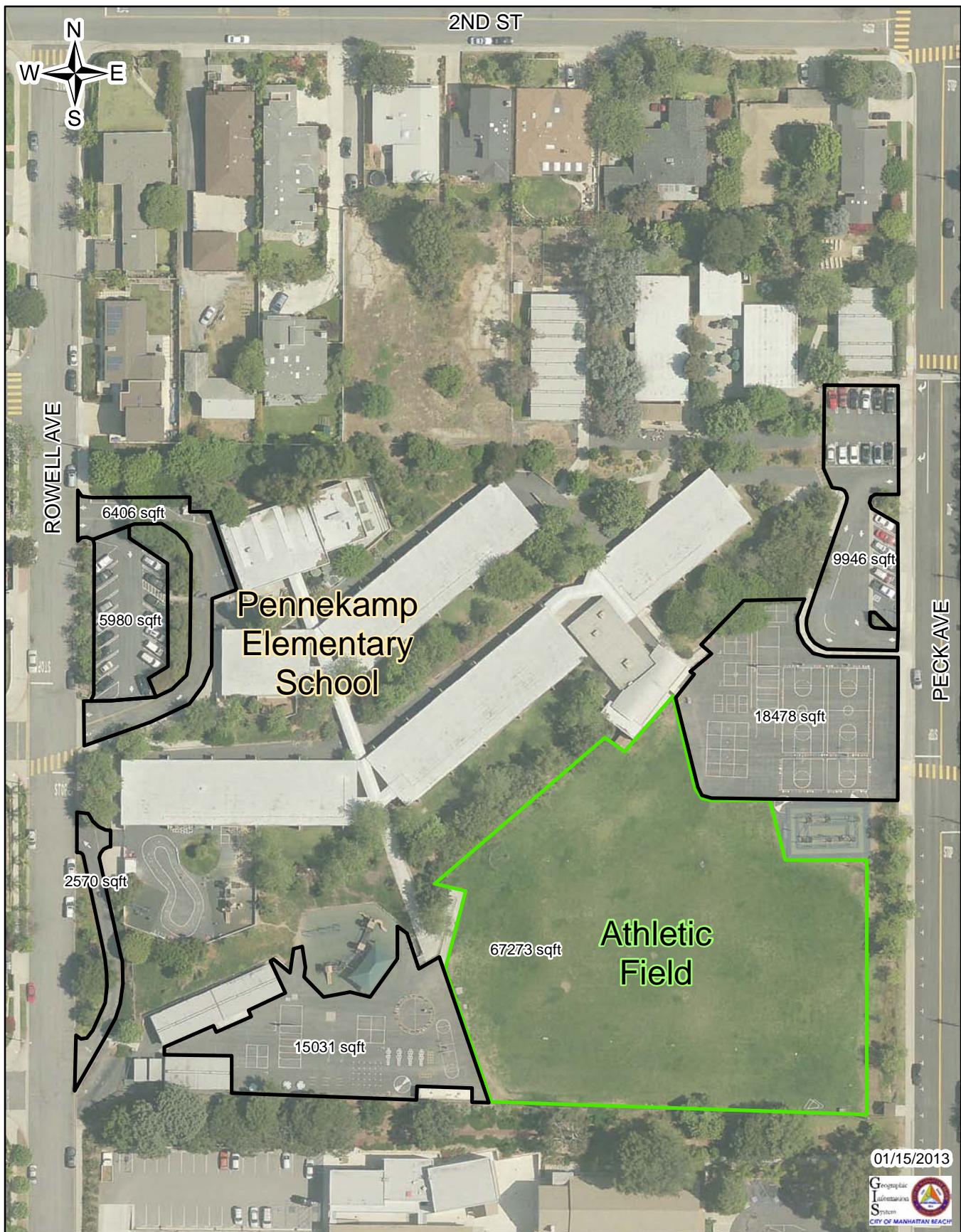
# MEADOWS SCHOOL

1 inch = 100 feet



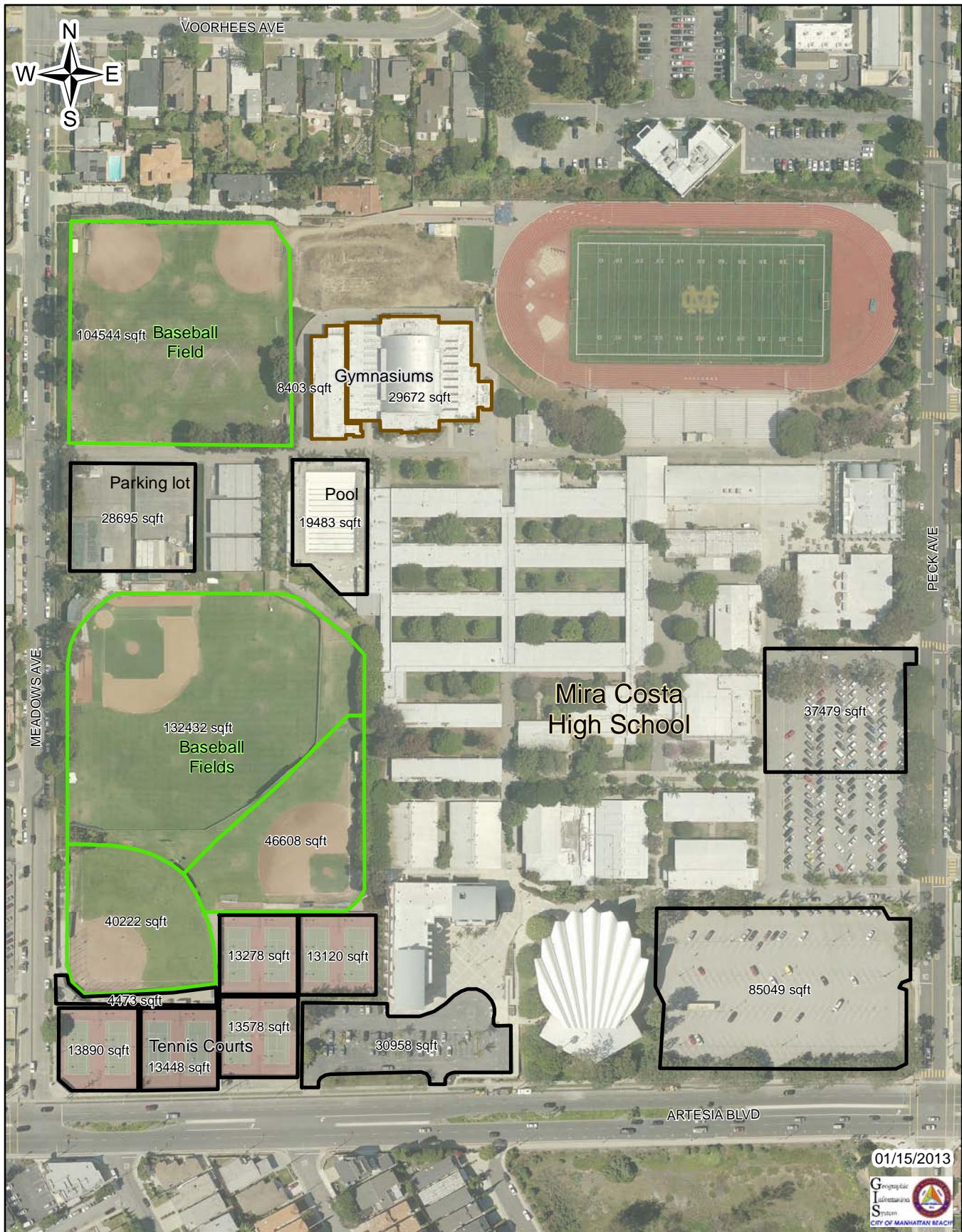
# PENNEKAMP SCHOOL

1 inch = 100 feet



# MIRA COSTA HIGH SCHOOL

1 inch = 200 feet



## **EXHIBIT B**

### **ADDITIONAL TERMS FOR USE OF CERTAIN ATHLETIC FIELDS AND FACILITIES**

The following additional terms apply to the use of the following District Facilities: Begg Field, Manhattan Beach Middle School Fields, Pacific School Athletic Field, Center Athletic Field located at Pacific School, Grand View School Athletic Field, Robinson School Athletic Field, Meadows School Athletic Field, Pennekamp School Athletic Field, Mira Costa Athletic Fields, hardscape courts and related parking facilities shown on Exhibit A (collectively referred to as "Athletic Fields and Facilities" unless otherwise indicated).

A. Use. The City shall use the Athletic Fields and Facilities for City Sanctioned activities and for uses incidental thereto and for no other purpose, but only during the Usage Period except with prior written permission from the District.

B. Scheduling. The City has priority in the use of the Athletic Fields and Facilities and the Director shall be responsible for scheduling the use of the Athletic Fields and Facilities during the Usage Period. An Educational Activity, however, at a school adjacent to a particular Athletic Field and Facilities, whether during normal school hours or Non-School Hours, shall take precedence over any City use of the Athletic Fields and Facilities. In order to exercise this right of priority during the Usage Period, the District must schedule such uses with the Director sixty (60) days in advance of such use. Such priority shall be granted for only Educational Activities. In the event that the District needs to schedule an unforeseen one-time Educational Activity (such as CIF tournament play) and cannot provide sixty (60) days' notice, then the request must be approved by the Business Manager or Superintendent of the District and provided to the City Parks and Recreation Director by facsimile delivery as soon as practical, but not less than seventy-two (72) hours prior to the one-time Educational Activity.

## EXHIBIT C

### ADDITIONAL TERMS FOR USE OF BEGG SWIMMING POOL

The following additional terms apply to the use of the Begg Swimming Pool Complex located on the Begg School campus (“School Site” in this exhibit), which complex consists of a swimming pool and the surrounding decking, pool area, equipment room and adjoining landscaped areas (collectively “Swimming Pool Complex” or “Complex”).

A. License. The District hereby grants to the City a license to repair, renovate, use and operate the Complex; to use the boys and girls locker room and bathroom facilities adjacent to the Complex; to use parking spaces at the School Site and have access across the School Site both as designated by the District from time to time for the Term and as appropriate for the use of the Complex upon the terms and conditions set forth in this Agreement, in accordance with the schedule (“Begg Pool Schedule”) attached hereto as Exhibit C-1.

B. Use.

1. City Use. The City may use the Complex only for City Sanctioned instructional and recreational swimming and sporting related activities and for uses incidental thereto under the direction of the City and pursuant to reasonable rules and regulations promulgated by the City. The City may use the Complex only during Non-School Hours (with the exception of chemical deliveries), except with written permission of the District.

2. District Use. The District may use the Complex only for Educational Activities. Any Educational Activity, whether during normal school hours or during Non-School Hours, shall take precedence over any right granted herein to the City to use the Complex. If the District desires to exercise its preemptive right to use the Complex during Non-School Hours for an Educational Activity, then it must schedule such use with the Director at least two (2) weeks prior to the date of such Educational Activity.

C. Scheduling. The City Manager or designee and Superintendent or designee shall meet once a year on or before May 1 of each year to develop the “Begg Pool Schedule.” The Begg Pool Schedule for Fiscal Year July 1, 2013-June 30, 2014 is attached hereto as Exhibit C-1. The City Manager shall cause the Begg Pool Schedule for each additional year to be attached to this Agreement as Exhibit C-1.

D. Control of Swimming Pool Complex. During such times as the Complex is scheduled for exclusive use by the City pursuant to the Schedule, the City shall have control over and the beneficial use thereof. During such times as the Complex is scheduled for exclusive use by the District, the District shall have control over and the beneficial use thereof. The party in control of the Complex shall be responsible for providing adequate supervision of the Complex including, but not limited to, having an appropriate number of lifeguards.

E. Maintenance of the Swimming Pool Complex. Maintenance and operational expenses of the Complex will be the sole responsibility of the City during its Usage Period of the Complex. Maintenance and operational expenses of the Complex will be the sole responsibility of the District during the period when Educational Activities are taking place at the Complex.

The District and the City shall bear the maintenance and operational expenses of the Complex equally when neither party is using the Complex. The City will be responsible for advancing the costs associated with the maintenance and operation of the Complex during the period when neither party is using the Complex and will invoice the District for its share of expenses at the end of each fiscal year.

F. Maintenance of Lockers and Bathrooms. As stated in Section A of this Exhibit, this Agreement provides a license to the City to use the boys and girls locker room and bathroom facilities adjacent to the Complex. Maintenance and operational expenses such facilities will be the sole responsibility of the City during its Usage Period of the Complex. Maintenance and operational expenses of such facilities will be the sole responsibility of the District during the period when Educational Activities are taking place at the Complex. The District and the City shall bear the maintenance and operational expenses of such facilities equally when neither party is using the Complex. The City will be responsible for advancing the costs associated with the maintenance and operation of such facilities during the period when neither party is using the Complex and will invoice the District for its share of expenses at the end of each fiscal year.

G. Subcontractors. The City shall have the right to subcontract its maintenance of the Complex with the prior written consent of the Business Manager, which consent shall not unreasonably be withheld. If the City subcontracts the maintenance of the Complex to a third party (the "Subcontractor"), the Subcontractor shall indemnify, defend and hold harmless the District, its governing body, officers, agents, employees, lawyers and all persons acting by, through, under or in concert with any of them from and against any and all actions, suits, liabilities, debts, liens, claims, demands, damages, costs, losses or expenses of any nature whatsoever arising from any act or omission of the Subcontractor. The City shall subject any Subcontractor to the same hiring standards for evaluating character and quality as are used by the District in connection with hiring contractors for construction and maintenance who will be working in close proximity to young children.

H. Compliance with Health and Safety Standards. The City shall operate the Swimming Pool Complex in accordance with the health and safety standards of the City of Manhattan Beach, the County of Los Angeles and the State of California.

I. City Office. The City may place a work office in the Complex with dimensions not to exceed 12 feet by 28 feet in a location approved by the Superintendent or designee.

## Exhibit C-1

### 2013 Begg Pool City and School District Schedule of Use

<b>Month</b>	<b>City hours of operation</b>	<b>District hours of operation</b>
*January	3pm – 8pm (M –TH) last week only	None
February	3pm – 9pm (M –TH)	None
March	3pm – 9pm (M –TH)	7am – 3pm (M – F) staring mid-March
April	3pm – 9pm (M –TH) & 9am – 3pm (sat)	7am – 3pm (M – F)
May	3pm – 9pm (M –TH) & 9am – 3pm (sat)	7am – 3pm (M – F)
June	3pm – 9pm (M –TH) & 9am – 3pm (sat)	7am – 3pm (M – F)
July	6am – 10 pm (M – F) & 9am – 5pm (sat. & sun)	None
August	6am – 10 pm (M – F) & 9am – 5pm (sat. & sun)	None
September	3pm – 9pm (M –TH) & 9am – 3pm (sat)	7am – 3pm (M – F)
October	3pm – 9pm (M –TH) & 9am – 3pm (sat)	7am – 3pm (M – F)
November	3pm – 9pm (M –TH) & 9am – 3pm (sat)	7am – 3pm (M – F) until mid- Nov.
*December	3pm – 8pm (M –TH) first two weeks only	None

City Masters swim program meets Monday through Friday from 6:15-7:15 a.m. year round

\*Pool will be closed for maintenance from the third week in December to the end of January

**Approx. total hours of Begg pool used by the City are: 1,619 hours for 2013 (61%)**

**Approx. total hours of Begg Pool used by the District are: 1,040 hours for 2013 (39%)**

## **EXHIBIT D**

### **ADDITIONAL TERMS FOR USE OF MIRA COSTA TENNIS COURTS**

The following additional terms apply to the use of the Mira Costa Tennis Courts.

A. The parties agree to share the maintenance of the tennis courts at Mira Costa High School as follows:

1. Nets: The District shall replace all worn, damaged, or stolen nets and center straps with equal quality nets as used at other City tennis facilities (including installation).

2. Windscreens: The City shall replace all worn, damaged, or stolen windscreens with equal quality screens as used at other City tennis facilities.

3. Washing: The City shall wash the courts no less than every other week and as needed due to unusual weather conditions or overall condition of the courts. The District is to maintain water supply lines in working condition so that washing can take place on a regular basis.

4. Lighting: The City shall maintain, replace, and pay for all energy costs and electrical repairs at the courts and tennis booth.

5. Graffiti: The District shall remove, paint, or replace any graffiti damaged items in or on the tennis courts in a reasonable time frame (twenty-four (24) hours or less, unless on a weekend or holiday).

6. Resurfacing: The City shall resurface all courts as needed to maintain the courts in a similar condition to other City tennis courts.

7. Trash: The District shall empty all trash receptacles on a daily basis Monday through Friday. The City will empty trash receptacles as needed on weekends into a large bin maintained by the District on the west side of the baseball field at Mira Costa High School.

8. Gates, Locks and Fencing: The District shall maintain, repair, or replace all fencing, gates and locks on both the perimeter and the interior of the tennis courts. Repairs and replacement shall be made in a timely manner with materials equal to those being repaired or replaced.

9. Restrooms: The District shall maintain, repair or replace all restrooms.

B. Scheduling.

1. The City shall schedule court time for reservation from 5:00 p.m. to 9:00 p.m., Monday through Friday and from 8:00 a.m. to 8:00 p.m., Saturdays and Sundays during the school year. If the District provides the City with at least seventy-two (72) hours' notice of a Mira Costa High School tennis match that requires use of the tennis courts between

5:00 p.m. and 6:00 p.m. on a weekday, then the City shall not schedule court time during that hour.

2. The City shall schedule courts Monday through Friday from 8:00 a.m. to 9:00 p.m. and on weekends from 8:00 a.m. to 8:00 p.m. During those weeks when summer school is conducted at Mira Costa High School, the District may use the courts until 11:00 a.m. for summer school tennis classes and the City shall not schedule courts before 11:00 a.m. on weekdays. The District shall provide the City with a schedule of summer school tennis classes no later than June 1 of each year.

3. All times not scheduled by the City pursuant to paragraphs 1 and 2 above will be reserved for District use unless other arrangements are mutually agreed upon between the District and the City.

C. Security. All courts are to be locked when not in use. The City will close and lock all gates when concluding daily activities (8:00 p.m. or 9:00 p.m.). The District may open courts during school hours to accommodate classes or team play but shall lock them at the conclusion of play if City staff is not on premises.

## **EXHIBIT E**

### **ADDITIONAL TERMS FOR USE OF POLLIWOG PARK AND PREMIERE FIELD**

The following additional terms apply to the use of Polliwog Park and Premiere Field (hereinafter “Park and Field”).

**A. Use.**

1. **City Use.** Except as stated in Sections 2 and 3 of this Exhibit E, the City shall have first priority usage of the Park and Field. The City shall use the Park and Field solely for passive and active park uses including, but not limited to, recreational activities, sporting activities, picnic uses, and special events.

2. **District Use.** The City shall provide to the District first priority usage of the Park and Field for all Educational Activities. In order to exercise this right of priority, the District must schedule such uses with the Director at least sixty (60) days in advance of such use.

3. **Unforeseen Educational Event.** In the event the District needs to schedule an unforeseen Educational Activity approved by the Business Manager or Superintendent of the District (such as CIF tournament play), the District may reserve the Park and Field (or any designated portion thereof) by providing written notice to the Director as soon as practical, but in no event less than seventy-two (72) hours prior to the event, by letter, facsimile delivery or by electronic mail from the Business Manager or Superintendent of the District.

**B. Scheduling.** The Director shall be responsible for scheduling the use of the Park and Field.

## EXHIBIT F

### **ADDITIONAL TERMS FOR USE OF THE POOL AT MIRA COSTA HIGH SCHOOL**

The following additional terms apply to the use of the pool located at Mira Costa High School (referred to as "Mira Costa Pool").

**A. Use.**

1. **City Use.** The City may use the Mira Costa Pool only for City Sanctioned instructional and recreational swimming and sporting related activities and for uses incidental thereto under the direction of the City and pursuant to reasonable rules and regulations promulgated by the City. The City may use the Mira Costa Pool only during the Usage Period except with written permission of the District.

2. **District Use.** Any Educational Activity, whether during normal school hours or during Non-School Hours, shall take precedence over any right granted herein to the City to use the Mira Costa Pool. If the District desires to exercise its preemptive right to use the Mira Costa Pool during Non-School Hours for an Educational Activity, then it must schedule such use with the Director at least two (2) weeks prior to the date of such Educational Activity.

3. **Unforeseen Educational Activity Events.** In the event the District needs to schedule an unforeseen Educational Activity approved by the Business Manager or Superintendent of the District (such as CIF tournament play), the District may reserve the Park and Field (or any designated portion thereof) by providing written notice to the Director as soon as practical, but in no event less than seventy-two (72) hours prior to the event, by letter, facsimile delivery or by electronic mail from the Business Manager or Superintendent of the District.

B. **Scheduling.** The City Manager or designee and Superintendent or designee shall meet once a year on or before May 1 of each year to develop the "Mira Costa Pool Schedule." The Mira Costa Pool Schedule for Fiscal Year July 1, 2013-June 30, 2014 is attached hereto as Exhibit F-1. The City Manager shall cause the Mira Costa Pool Schedule for each additional year to be attached to this Agreement as Exhibit F-1.

C. **Control of Mira Costa Pool.** During such times as the Mira Costa Pool is scheduled for exclusive use by the City pursuant to the Mira Costa Pool Schedule, the City shall have control over and the beneficial use thereof. During such times as the Mira Costa Pool is scheduled for exclusive use by the District, the District shall have control over and the beneficial use thereof. The party in control of the Mira Costa Pool shall be responsible for providing adequate supervision of the Mira Costa Pool including, but not limited to, having an appropriate number of lifeguards.

D. **City Office Space.** The City Manager or designee will work with the Superintendent or designee to determine whether and where an appropriately sized work office can be placed.

**EXHIBIT F-1****2013 Mira Costa High School Pool City and School District Schedule of Use**

<b>Month</b>	<b>City hours of operation</b>	<b>District hours of operation</b>
January	5:30pm – 10pm (M –F) 9am – 6pm (S-S)	6am – 5:30pm (M-F)
February	5:30pm – 10pm (M –F) 9am – 6pm (S-S)	6am – 5:30pm (M-F)
March	5:30pm – 10pm (M –F) 9am – 6pm (S-S)	6am – 5:30pm (M-F)
April	5:30pm – 10pm (M –F) 9am – 6pm (S-S)	6am – 5:30pm (M-F)
May	5:30pm – 10pm (M –F) 9am – 6pm (S-S)	6am – 5:30pm (M-F)
June	5:30pm – 10pm (M –F) 9am – 6pm (S-S)	6am – 5:30pm (M-F)
July	Closed for maintenance	
August	Closed for maintenance	
September	5:30pm – 10pm (M –F) 9am – 6pm (S-S)	6am – 5:30pm (M-F)
October	5:30pm – 10pm (M –F) 9am – 6pm (S-S)	6am – 5:30pm (M-F)
November	5:30pm – 10pm (M –F) 9am – 6pm (S-S)	6am – 5:30pm (M-F)
December	5:30pm – 10pm (M –F) 9am – 6pm (S-S)	6am – 5:30pm (M-F)

***Approx. total hours of Mira Costa pool used by the City are: 1,742 hours for 2013 (42%)***

***Approx. total hours of Mira Costa Pool used by the District are: 2,473 hours for 2013 (58%)***