

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE MESA UNIFIED SCHOOL DISTRICT NO. 4
AND THE CITY OF MESA
RELATING TO THE DESIGN AND CONSTRUCTION OF THE
AQUATIC FACILITY AT MESA HIGH SCHOOL**

This agreement is made and entered into this _____ day of _____, 2014 ("Effective Date"), by and between the City of Mesa, an Arizona municipal corporation ("City") and School District No. 4 of Maricopa County, Arizona also known as Mesa Unified School District No. 4, a political subdivision of the State of Arizona ("District"). City and the District are referred to herein individually as the "Party" and collectively as the "Parties."

RECITALS:

- A.** City and District desire to design and construct an Aquatic facility that will jointly serve District students and the public at Mesa High School ("Mesa Aquatic Facility").
- B.** District has a suitable site located at Mesa High School for the construction of an Aquatic facility and has agreed to enter into a no cost lease with the City for a period of not less than thirty (30) years.
- C.** City has determined that it is in the best interest of the public and the residents of the City of Mesa that the City expend funds to complete the design and construction of the Mesa Aquatic Facility.
- D.** City and District desire that the Mesa Facility be used jointly for District students and the public and that its operation, maintenance, and control be the joint responsibility of the City and District.
- E.** City is authorized to enter into intergovernmental agreements for services or for the exercise of joint or common powers, pursuant to Arizona Revised Statutes Section 11-951 et. seq. and Chapter 1, Article 1, Section 103 of the Mesa City Charter.
- F.** District is authorized to enter into intergovernmental agreements for services or for the exercise of joint or common powers, pursuant to Arizona Revised Statutes Section 11-951 et. seq. and Arizona Revised Statutes Section 15-342.

AGREEMENT:

SECTION 1 . DEFINITIONS

1.01 **"Mesa Aquatic Facility"** shall mean collectively the pools, play features, equipment storage, office, classroom, locker buildings, and other improvements that the Parties may agree to construct or purchase as part of the construction of the Mesa Aquatic Facility.

1.02 **“Completion of the Mesa Aquatic Facility”** shall mean the occurrence of both events: (a) the issuance of a certificate of occupancy for the Mesa Aquatic Facility, and (b) the Mesa Aquatic Facility is open for use by either District students or members of the general public.

1.03 **“Site”** shall mean the real property located at Mesa High School as depicted on Exhibit A attached hereto and with this reference incorporated herein.

1.04 **“Statement of Work”** shall mean the description of work to be performed and the schedule for completing such work attached hereto at each site as Exhibit B and with this reference incorporated herein.

SECTION 2 . TERM AND TERMINATION OF AGREEMENT

2.01 **Term.** The initial term of this Agreement shall be for thirty (30) years beginning on the Effective Date. This Agreement may be renewed for subsequent terms of one year each upon written notice by either Party as provided for in Section 6 of this Agreement, provided neither party has terminated the Agreement as provided in Section 2.02 through 2.04 of this Agreement.

2.02 **Termination without Cause.** This Agreement may be terminated at the end of its initial term or at the end of each subsequent term. Such termination shall become effective at the end of the then current term upon either party to this Agreement providing the other party with sixty (60) calendar days prior written notice of the intent to terminate.

2.03 **Termination for Non-Appropriation.** The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines that it does not have funds to meet its obligations under this Agreement, the City will have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, the City agrees to provide written notice of its intent to terminate sixty (60) calendar days prior to the stated termination date.

2.04 Termination for Default.

(a) **Default.** A default under this Agreement shall occur if either Party defaults in the performance or observance of any of its covenants, promises, undertakings, or agreements contained in this Agreement, and fails to cure the same or fails to diligently and continuously pursue or perform the actions necessary to cure the same within thirty (30) calendar days after written notice to the defaulting Party by the non-defaulting Party of such default; provided, however, if the failure stated in the written notice cannot be corrected within the applicable period, the non-defaulting Party shall not

unreasonably withhold its consent to an extension of such time if corrective action is instituted by the defaulting Party as appropriate, within the applicable period and diligently pursued until the default is corrected.

(b) Remedies. Provided the Party seeking to declare a default is not also in default under this Agreement, then upon the occurrence of any default by any Party as set forth above, the non-defaulting Party, at its option and not less than fifteen (15) business days after written notice has been provided to the defaulting Party, may do any one or more of the following in any order or combination as the non-defaulting Party shall elect in its sole and unfettered discretion:

- i. Withhold making any further payments to the defaulting Party;
- ii. Seek legal remedies for any sums owed by or damages caused by the defaulting Party; and
- iii. Terminate the Agreement.

2.05 Disposal of Property.

(a) Property Ownership. Upon the expiration or other termination of this Agreement, all removable fixtures, equipment, and other personal property purchased, constructed, or installed on the Site pursuant to this Agreement (the "Personal Property") shall belong to City. All Site Improvements purchased, constructed, or installed on the Site pursuant to this Agreement shall belong to the District. In the event the City determines to remove any or all of the Personal Property from the Site, the City shall repair any damage to the real property or Site Improvements caused by such removal.

(b) Compensation for Mesa Aquatic Facility. If the District terminates this Agreement pursuant to Section 2.02, the District shall compensate the City for its cost of the Mesa Aquatic Facility, less accumulated depreciation based on Governmental Accounting Standards Board (GASB) standards, as of date of termination of this Agreement.

SECTION 3 . DESIGN AND CONSTRUCTION OF THE AQUATIC FACILITY

3.01 District Responsibilities for the Mesa Aquatic Facility.

(a) Mesa Facility Contribution. District shall agree to a minimum of a thirty (30) year no cost lease for the land to be used for construction. District shall provide the land for the Mesa Aquatic Facility on the northeast corner of Southern Avenue and Harris Drive.

(b) **Service Connections.** District shall provide City with the facilities reasonably necessary for service connections, including without limitation utility, utility easements, alarm system, public address system, and internet connections.

(c) **Summer Recreation Camps.** District will provide adequate space within the Mesa High School campus for City's summer recreation camps on a yearly basis, if so requested by City. The use of the Mesa High School facilities will be governed by the Intergovernmental Agreement between Mesa Unified School District No. 4 of Maricopa County and the City of Mesa dated September 25, 2003, as amended. District understands that allowance of this program is integral to the success of the summer Aquatic program at the Mesa Aquatic Facility.

(d) **Mesa High Parking Area.** The District shall grant the City, without cost, a non-exclusive easement over the Mesa High Parking Area for ingress and egress to the Mesa Aquatic Facility and for parking by the public when using the Mesa Aquatic Facility. The District and the City agree that their joint use of the Mesa High Parking Area shall be subject to the following conditions:

- i. The public may use the Mesa High Parking Area whenever the Mesa Aquatic Facility is open for public use, provided, however, the District and the City will give notice to the other and use the Mesa High Parking Area cooperatively whenever it is anticipated that scheduled events may create a shortage of parking spaces in the Mesa High Parking Area.
- ii. The District may adopt and enforce reasonable rules for use of the Mesa High Parking Area, including rules for traffic flow during school hours and enforcement of State laws applicable to school district property.

3.02 **City Responsibilities.**

(a) **Mesa Aquatic Facility Contribution.** City shall pay all costs for the design and construction of the Mesa Aquatic Facility.

(b) **Lead Agency.** City shall be the lead agency for the design and construction of the Mesa Aquatic Facility. As lead agency, City shall execute agreements for the design and construction of such facility. City shall oversee the design and construction to ensure that the Mesa Aquatic Facility is in conformance with the Statement of Work. City shall provide District with notice of scheduled construction inspections throughout the construction.

(c) **District Review and Approval.** City shall require the construction contractor to obtain input and approval of District on the schedule of construction for the Mesa Aquatic Facility and allow a District representative to attend

meetings between the City and contractor regarding construction progress or change orders.

SECTION 4 . ADDITIONAL AGREEMENT

4.01 Additional Agreement. The Parties acknowledge and agree that the agreement between the Parties entitled "City of Mesa Public Schools and City of Mesa Parks and Recreation Department Swimming Facilities Agreement," ("Swimming Facilities Agreement") dated June 10, 1986 shall govern the operation and maintenance of the Mesa Aquatic Facility. The parties acknowledge that the Swimming Facilities Agreement may be replaced with a renegotiated new agreement at some point in the future.

SECTION 5 . INSURANCE AND INDEMNIFICATION.

5.01 Mutual Indemnification. Each Party (the "Indemnifying Party") shall, to the extent permitted by law, defend, indemnify and hold harmless the other Party and each elected or appointed official, or employee thereof (the "Indemnified Party") from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including property damage, personal injury and wrongful death and further including, without limitation, reasonable attorneys' fees and costs, which may be imposed upon or incurred by or asserted against the Indemnified Parties by reason of the negligent acts or omissions, or willful misconduct of the Indemnifying Party occurring during the Term of this Agreement, including any renewals thereto.

An Indemnified Party shall promptly, after the receipt of written notice of a threat, claim or commencement of any action against such Indemnified Party in respect of which indemnification may be sought against the Indemnifying Party, notify the Indemnifying Party of the threat, claim or commencement of said action. The failure of the Indemnified Party to give such prompt notice shall not reduce the liability of the Indemnifying Party unless the Indemnifying Party is actually prejudiced by such failure to receive prompt notice.

5.02 Insurance. Prior to the commencement of construction activities for the construction of the Mesa Aquatic Facility, City shall procure and then maintain in effect, or cause to be procured and maintained in effect, commercial general liability insurance with a broad form general liability endorsement against liability, damage or loss because of or on account of bodily injuries to or the death of any person or the destruction of or damage to property or loss of use thereof of any person, due in any way to the use, occupancy, maintenance, or operation of the Site. Said insurance shall contain coverage for the activities and operations of City or any other person on, in or about the Site or performing work on behalf of City. The insurance shall be in minimum amounts of Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate. All insurance to be carried by City shall be primary to and not contributory with any insurance carried by District, whose insurance shall be considered excess insurance only. City may meet any of the insurance requirements referenced in

this section via a self-insurance program. Each policy of insurance shall be endorsed: (a) to name the District as an additional insured; (b) to be primary as to any insurance maintained by the District, so that the latter shall be excess and not contributory to insurance provided by the City; and (c) to provide that the waiver of subrogation set forth below shall not invalidate or have any adverse effect on the insuring agreements or liability of the insurer under the policy. The insurance companies issuing such insurance shall agree to notify the District in writing of any cancellation, alteration or nonrenewal of the policy at least thirty (30) days prior thereto. District and City shall not be liable one to the other or to any insurance company (by way of subrogation or otherwise) insuring any Party for any loss or damage to property or injury to persons, or any resulting loss of income, or losses under workers' compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence of such Party or its agents or employees, if any such loss or damage is covered by insurance benefiting the Party suffering such loss or damage; provided, however, that any limitation on District's or City's liability pursuant hereto shall only be to the extent of available insurance.

SECTION 6 . NOTICES

6.01 Except as otherwise required by law, any notice, demand or other communication given hereunder, shall be in writing and shall be promptly given by personal delivery or be sent by certified or registered U.S. Mail, return receipt requested, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this paragraph, or by telecopy, facsimile machine or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid:

To City:

City of Mesa
Parks, Recreation and Commercial Facilities Department
P.O. Box 1466
Mesa, AZ 85211-1466
Attn: Department Director

To District:

Mesa Unified School District
549 North Stapley Drive
Mesa, AZ 85203-7297
Attn: Assistant Superintendent of Business Services and Government Relations

SECTION 7 . GENERAL PROVISIONS

7.01 Conflict Resolution. If an issue arises that cannot be resolved at the front-line staff level, the District's Director of Construction and the City's Assistant Director of the Parks, Recreation and Commercial Facilities Department responsible for the Aquatic Program shall review the issue. If the issue is not resolved at the second level of review, the District's Assistant Superintendent for Business and Support Services and City's Parks, Recreation and Commercial Facilities Department Director shall review the issue.

7.02 Good Faith. City and District hereby acknowledge and agree that they shall cooperate in good faith with each other and use commercially reasonable efforts to pursue the obligations imposed by this Agreement.

7.03 Continuation During Disputes. City and District agree that during any dispute between the parties, the parties will continue to perform its obligations under this Agreement until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.

7.04 Entire Agreement, Amendments. This Agreement, including the recitals and any exhibits attached hereto, and any agreements contemplated herein, represents the entire agreement between the parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification or amendment of this Agreement will be binding unless in writing and executed by District and City.

7.05 Waivers. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, whether or not similar, nor will any waiver be a continuing waiver. No waiver will be binding unless executed in writing by the Party making the waiver. Either Party may waive any provision of this Agreement intended for its benefit; provided, however, such waiver will in no way excuse the other Party from the performance of any of its other obligations under this Agreement.

7.06 Governing Law, Choice of Forum. This Agreement shall be deemed to be governed by, and construed in accordance with, the laws of the State of Arizona. Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action).

7.07 Section Headings. The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

7.08 Severability. If any term or provision in this Agreement is declared void or unenforceable, such term or provision shall be deemed severed from this Agreement and the remaining terms and provisions shall remain in full force and effect to the fullest extent allowed by law.

7.09 Non-Discrimination. City and District represents and warrants that neither party knowingly discriminates against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. City and District personnel will comply with all applicable provisions of Title VII of the U.S. Civil Rights Act of 1964, as amended, section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and applicable rules in performance under this Agreement.

7.10 No Assignment. Neither Party shall transfer or assign all or any part of its rights or obligations under this Agreement without the prior express written consent of the other Party, which approval may be given or withheld in said other Party's sole and unfettered discretion. Notwithstanding the foregoing, City's retaining one or more independent contractors to design and construct the Mesa Aquatic Facility shall not be deemed an assignment under this Agreement.

7.11 Conflicts of Interests. The provisions of Arizona Revised Statutes Section 38-511 are applicable to this Agreement.

7.12 Provisions Required By Law. Any provision required by law to be in this Agreement is a part of this Agreement as if fully stated in it.

7.13 Surviving Provisions. Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any party from any liability or obligation arising prior to the date of termination.

7.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be an original but all of which will constitute one and the same instrument. Signature and acknowledgement pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single or multiple original(s) of this document.

IN WITNESS WHEREOF, the parties have executed this Agreement on the Effective Date.

City of Mesa:

Mesa Unified School District No. 4:

Christopher J. Brady
City Manager

Michael B. Cowan
Superintendent

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Christopher J. Brady, the City Manager of the City of Mesa, an Arizona municipal corporation, on behalf of the corporation.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Michael B. Cowan, the superintendent of Mesa Unified School District No. 4, a political subdivision of the State of Arizona, on behalf of the political subdivision.

Notary Public

My Commission Expires:

ATTORNEY DETERMINATION

The intergovernmental agreement between the City of Mesa, Arizona, and the Mesa Unified School District, entitled Design and Construction of the Aquatic Facility at Mesa High School, has been reviewed pursuant to A.R.S. § 11-951 et. seq. by the undersigned City of Mesa attorney who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to both parties to the Agreement represented by the City of Mesa attorney.

City of Mesa Attorney

Date

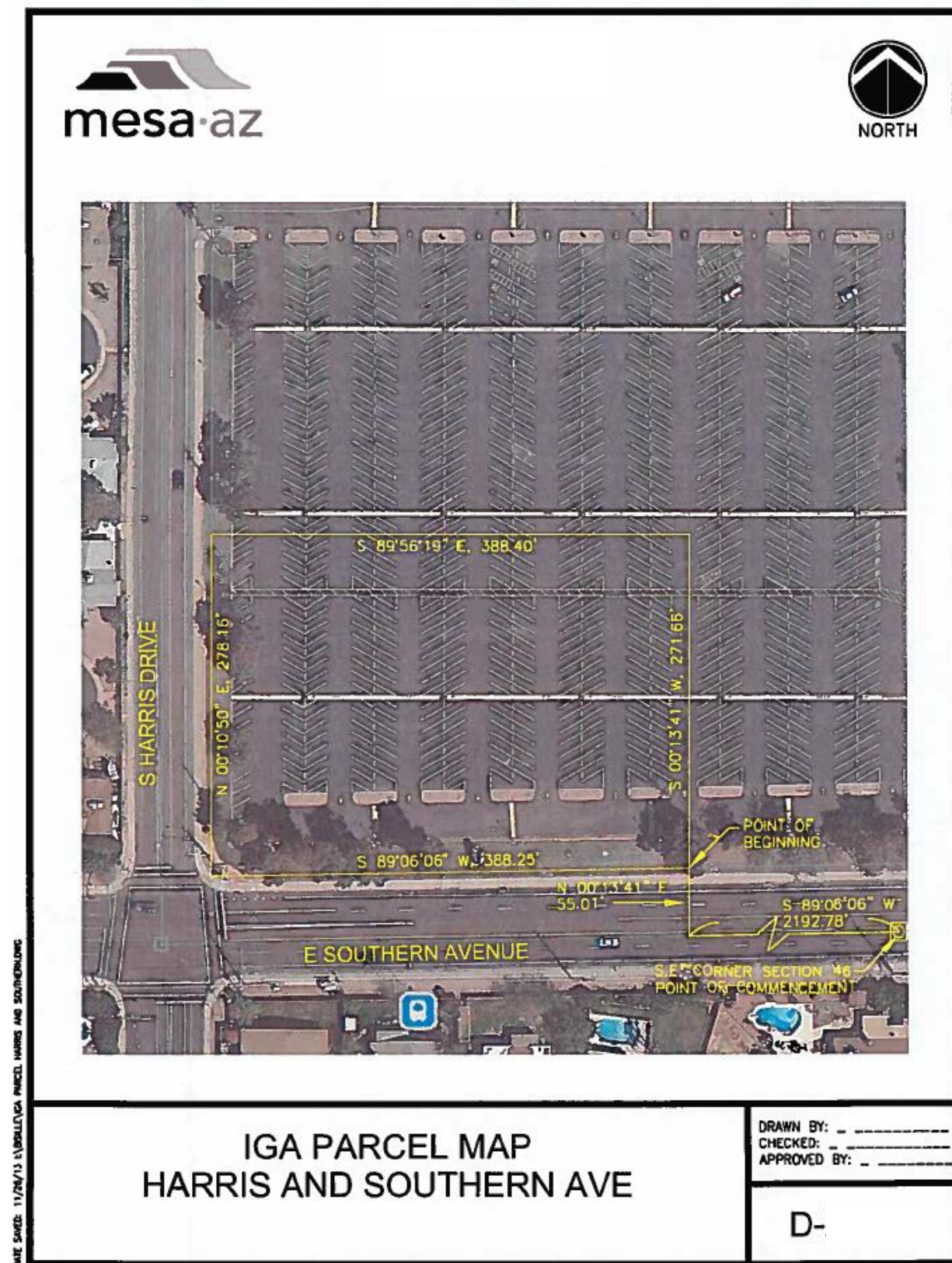
ATTORNEY DETERMINATION

The intergovernmental agreement between the City of Mesa, Arizona, and the Mesa Unified School District, entitled Design and Construction of the Aquatic Facility at Mesa High School, has been reviewed pursuant to A.R.S. § 11-951 et. seq. by the undersigned School District attorney who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to both parties to the Agreement represented by the School District attorney.

School District Attorney

Date

Exhibit A: Site Map



IGA Parcel
Harris and Southern

A parcel of land located in Section 25, Township 1 North, Range 5 East of the Gila and Salt River Base and Meridian Maricopa County Arizona. described as follows;

Commencing for reference From the Southeast corner of said section 25;

Thence South $89^{\circ}06'06''$ West a distance of 2192.78 feet along the South line of said Section 25 (Basis of Bearing);

Thence North $00^{\circ}13'41''$ East a distance of 55.01 feet to the Point of Beginning;
Thence South $89^{\circ}06'06''$ West a distance of 388.25 feet parallel with said south line;

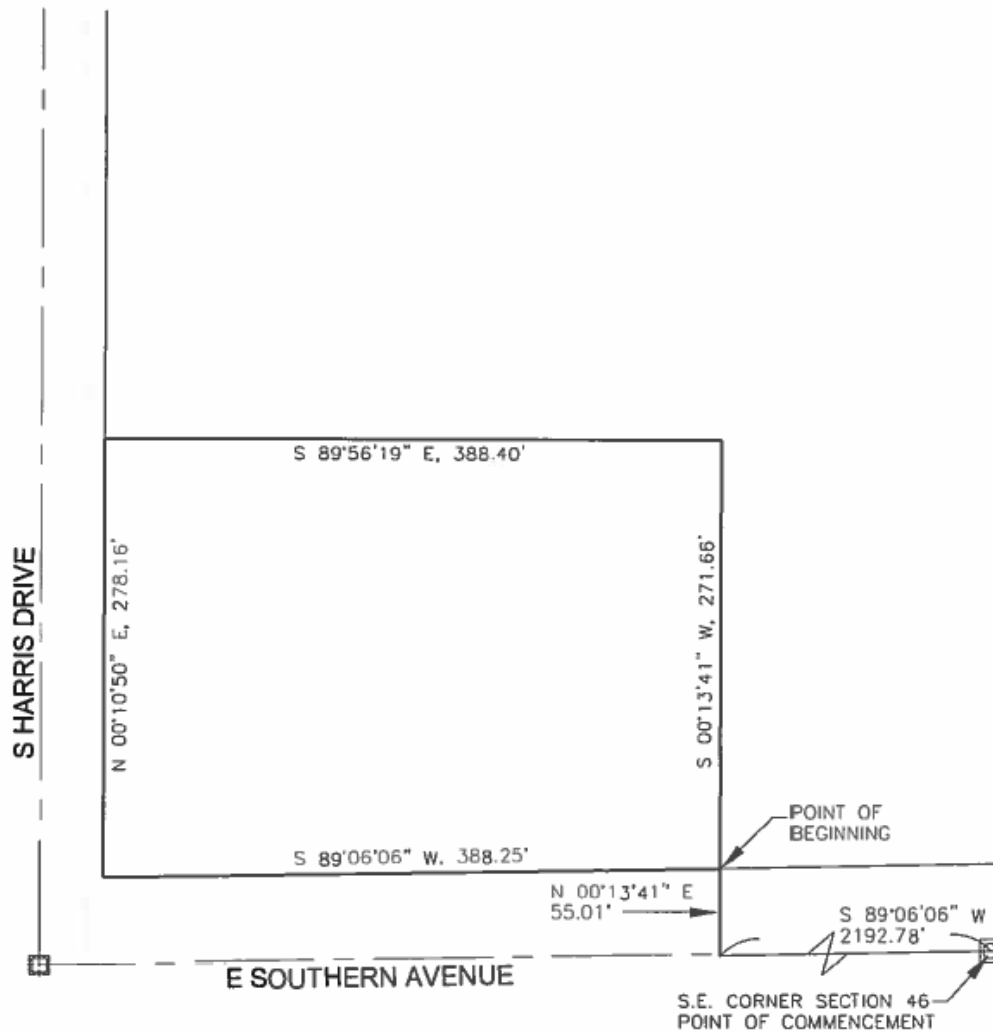
Thence North $00^{\circ}10'50''$ East a distance of 278.16 feet;

Thence South $89^{\circ}56'19''$ East a distance of 388.40 feet;

Thence South $00^{\circ}13'41''$ West a distance of 271.66 feet back to the Point of Beginning.

Containing 106745.2 sq feet or 2.45 acres more or less.





IGA PARCEL MAP
HARRIS AND SOUTHERN AVE

DRAWN BY: _____
CHECKED: _____
APPROVED BY: _____

D-

DATE SAVED: 12/3/13 E:\BOLLEYGA PARCEL HARRIS AND SOUTHERN (NO AERIAL).DWG

Exhibit B: Statement of Work

The Mesa High School Aquatic Facility Project will be comprised of a lap/diving pool and recreation pool. The first pool will have eight 25-yard lanes and a diving tank with one and three-meter diving boards. The other pool is a recreation pool that will have a zero-depth entry, a lazy river, and a vortex with a variety of aquatic play features. Two buildings will be constructed with enclosed restrooms, lockers, offices, a classroom, and enclosed mechanical/maintenance space to accommodate pool equipment and chemicals. Also included are shaded bleacher seating, a vending area with shaded seating, and exterior sports lighting. This facility has been designed to meet current Americans with Disabilities Act (ADA), County, and City standards and requirements.