

AGREEMENT NO. ___-____

**MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF YOLO
AND WESTERN YOLO RECREATION ASSOCIATION RELATING TO TULI
MEM PARK AND POOL OPERATIONS AND FUNDING**

This Memorandum of Understanding (the “MOU”) is entered into as of this 21st day of February 2023 by and between the County of Yolo (“County”) and the Western Yolo Recreation Association (“WYORCA”). The County and WYORCA are referenced collectively in this Agreement as the “Parties” and individually as a “Party.”

RECITALS

- A. The County provides recreational facilities and programs in the unincorporated area; and
- B. The County of Yolo obtained a California State Parks grant in March 2012 to construct a park and pool in Esparto (“Tuli Mem Park and Aquatics Center”) to meet the recreational needs of western Yolo County; and
- C. In 2014 and 2015, the Board of Supervisors evaluated approaches to ensure the operational sustainability of the proposed facility given a 30-year operational commitment required by the California State Parks; and
- D. WYORCA is a non-profit agency formed by the community to acquire funds to assist with building and maintaining a recreation center in western Yolo County to promote and meet the recreation and athletic needs of residents, including but not limited to, planning and funding programming for both the park and the pool; and
- E. WYORCA performed fundraising activities to develop an endowment fund to support County maintenance and operations at the Tuli Mem Park and Aquatics Center; and
- F. The creation and existence of an endowment fund placed with the Yolo Community Foundation was instrumental in the Board of Supervisors decision to proceed with construction of the Tuli Mem Park and Aquatics Center; and
- G. The Tuli Mem Park and Aquatics Center opened to the public and began operations in May, 2019; and
- H. The County and WYORCA have continued to partner to ensure availability of services and the success of the Tuli Mem Park and Aquatics Center; and
- I. The County and WYORCA wish to formalize agreement as to the aspects of the endowment funds and collaborative efforts related to the Tuli Mem Park and Aquatics Center as set forth in more detail herein;

NOW, THEREFORE, in consideration of the foregoing Recitals, the County and WYORCA agree as follows:

AGREEMENT

I. **Obligations.** The Parties mutually agree to the following obligations:

A. Annual Meeting. County and WYORCA shall meet at least once per calendar year to discuss operations and future plans at the Tuli Mem Park and Aquatic Center and to ensure coordination on related matters, including but not limited to fundraising, programming, and improvements. The timing and format of each annual meeting will be determined collaboratively between the County and WYORCA.

B. Endowment Funding. The Parties agree that the endowment principal and investment earnings shall be used solely by the County in its sole discretion exclusively for the Tuli Mem Park and Aquatic Center operations and maintenance until the endowment balance exceeds \$1 million. The amount requested annually will be limited to the annual spendable amount determined by the Yolo Community Foundation. When the endowment balance exceeds \$1 million, the County and WYORCA shall promptly meet and confer in good faith regarding the use of investment earnings on balances above that threshold. The Parties shall strive to develop an amendment to this MOU to memorialize their agreement regarding the use of such earnings. If for any reason no agreement is reached, either party may invoke dispute resolution pursuant Section V, below, to facilitate a resolution. Unless and until any amendment is executed, the investment earnings on balances exceeding \$1 million shall be available for the same purposes as all other investment earnings.

C. Balance Statements. WYORCA shall provide the County with the December 31 endowment balance statement within 30 days of receipt from the Yolo Community Foundation, demonstrating the balances contained in the endowment, and estimates of eligible distributions for the upcoming year. Additionally, if County requests from time to time, WYORCA shall provide other available balance statements (e.g., quarterly statements) within 30 days of receipt from the Yolo Community Foundation.

D. Annual Distributions to County. WYORCA shall take all actions necessary to provide the County with annual funding for facility operations and maintenance based on the December 31 statement, and as further specified below, subject to annual distribution limits of the Yolo Community Foundation:

- **First Distribution** – The first distribution will be $\frac{1}{2}$ (one-half) of the maximum spendable amount of the endowment, as determined by the Yolo Community Foundation. This amount will be due and payable to the County on or before July 31, 2023 (for 2023-24 fiscal year operations and maintenance)
- **Second Distribution** – The second distribution will be $\frac{3}{4}$ (three-quarters) of the maximum spendable amount of the endowment, as determined by the Yolo Community Foundation. This amount will be due and payable to the County on or before July 31, 2024 (for 2024-25 fiscal year operations and maintenance)
- **Third and Subsequent Distributions** – The third and all subsequent distributions will be the maximum spendable amount of the endowment, as determined by the Yolo

Community Foundation. This amount will be due and payable to the County on or before July 31, 2025 (for 2025-26 fiscal year operations and maintenance) and each subsequent July 31 thereafter.

- The County is aware and understands that distributing the maximum spendable amount of the endowment each year may result in a decrease in available funds in the future.

II. Term and Termination. The term of this MOU shall be deemed to commence on the date first set forth above and shall continue for thirty years through December 31, 2049. The County and WYORCA agree to meet and confer on the terms of this MOU at each five-year interval and determine whether any changes should be implemented by an amendment. The initial meet and confer on the agreement should occur within sixty days of December, 2027.

The County may terminate this MOU with or without cause on sixty (60) days' written notice provided to WYORCA. The notice shall specify the date on which termination shall become final and such notice shall be delivered as described in Section III.C, below. Due to the County's reliance on funding pursuant to this MOU, WYORCA may not terminate this MOU but may, in the event of a material breach by the County and after pursuing dispute resolution in accordance with Section V, below, direct the Yolo Community Foundation to suspend payments to the County until the breach is remedied.

III. Party Representatives; Notices.

A. The Parties' representatives for the implementation of this MOU are identified below and may be changed during the term of this MOU by written notice to the other Parties.

B. Any notice required by this MOU shall be given seven (7) or more calendar days before the Party notified is obliged to respond to the notice.

C. Any notices, bills, invoices, or reports required by this MOU shall be written and shall be deemed received on: (i) the day of delivery if delivered by hand, e-mail or overnight courier service during the receiving Party's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to WYORCA:

Carine Hines
President
PO Box 453
Esparto, CA, 95627
Telephone: 831-239-9916
Email: carinemarshall@gmail.com

If to County:

Ryan Pistoichini
General Services Director
625 Court Street, Room 201
Woodland, CA 95695
Telephone: 530-666-8218
E-mail: Ryan.Pistoichini@yolocounty.org

IV. Choice of Law. This MOU will be governed and construed in accordance with the laws of the State of California.

V. Dispute Resolution. Disputes arising under this MOU will be resolved, whenever possible, through the process of meeting and conferring in good faith or, if such efforts fail, by mediation in accordance with this Section. To that end, in the event of a dispute as to compliance with the terms and conditions of this MOU, the Parties agree as follows:

A. Either party will provide the other, as soon as reasonably possible after an event giving rise to concern, a written notice setting forth, with specificity, the issues to be resolved;

B. The Parties will meet and confer in a good faith attempt to resolve the dispute through negotiation no later than ten days after receipt of the notice, unless both Parties agree in writing to an extension of time;

C. If the dispute is not resolved to the satisfaction of the Parties within 30 calendar days after the first meeting, then either party may seek to have the dispute resolved by mediation offered by JAMS or another mediation service that the Parties may agree to;

D. If the Parties agree to mediation, each party shall bear its own costs, attorneys' fees and one half the costs and expenses of JAMS, or other mediation service and the mediator. There shall be a single neutral mediator named by mutual agreement of the Parties. The Parties shall strive to minimize costs associated with the mediation, such as by minimizing written submissions before the mediation and agreeing to half-day (or shorter) sessions.

E. If the Parties are unable to resolve their dispute, the Parties may mutually agree to arbitrate the dispute through JAMS or another arbitration service that the Parties may mutually agree to.

F. If either Party does not agree to arbitration, then either Party may seek resolution through litigation.

G. The provisions of Section 1283.05 of the California Code of Civil Procedure will apply to any arbitration; however, no discovery authorized by that section may be conducted absent good cause and leave of the arbitrator. The arbitral award will be in writing, and provide reasons for the decision. However, either party may file an appeal pursuant to the procedures authorized by JAMS.

VI. Subcontracting and Assignments; No Third Party Beneficiaries. Neither party may subcontract or assign its interest in this MOU or the rights under it to any third party, voluntarily or otherwise, without the prior written consent of the other party. The Parties do not intend to benefit any third party by this MOU and only the Parties may enforce it.

VII. Waiver. The waiver by any of the Parties of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this MOU shall be deemed to have been waived by the Parties unless in writing signed by one authorized to bind the Party to be charged with the waiver.

VIII. Severability. If any term or provision of this MOU (including the Exhibits hereto) or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable,

then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this MOU, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

IX. State Audit. Notwithstanding any other provision of law, every contract involving the expenditure of public funds in excess of ten thousand dollars (\$10,000) entered into by any state agency, board, commission, or department or by any other public entity, including a city, county, city and county, or district, shall be subject to the examination and audit of the California State Auditor, at the request of the public entity or as part of any audit of the public entity, for a period of three years after final payment under the contract.

X. Counterparts. This MOU may be executed in one or more counterparts which, taken together, shall be deemed to constitute one and the same document. Signatures of the Parties transmitted by facsimile or e-mail shall be deemed binding.

XI. Entire Agreement. All documents referenced as Exhibits in this MOU are hereby incorporated into this MOU as if fully set forth herein. In the event of any material discrepancy between the provisions of this MOU and those of any other document incorporated herein by reference, the provisions of this MOU shall prevail. This instrument contains the entire agreement among Parties with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the Parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed on behalf of the Parties to be bound.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this MOU as of the date first set forth above.

WYORCA

COUNTY OF YOLO

DocuSigned by: 2/6/2023
By: Carine Hines
Carine Hines
President

By: _____
Oscar Villegas, Chair
Yolo County Board of Supervisors

Attest: Julie Dachtler, Senior Deputy
Clerk of the Board of Supervisors

By: _____
Deputy (Seal)

APPROVED AS TO FORM:

DocuSigned by: 2/6/2023
By: Philip Pogledich
Philip Pogledich, County Counsel

