

**INTERGOVERNMENTAL AGREEMENT RESTATING AND AMENDING THE
RELATIONSHIP BETWEEN THE CITY OF GRAND JUNCTION, MESA COUNTY AND
MESA COUNTY VALLEY SCHOOL DISTRICT 51 CONCERNING THE ORCHARD
MESA SWIMMING POOL**

THIS AGREEMENT ("Agreement") is made and entered into by and between MESA COUNTY, hereinafter called "County," MESA COUNTY VALLEY SCHOOL DISTRICT NO. 51 hereinafter called "District" and THE CITY OF GRAND JUNCTION, hereinafter called "City," collectively the City, the County and the District may be referred to as the "Parties." The Agreement shall be effective on the date that it is signed by all Parties.

RECITALS:

The City, County and District are currently parties to a 1982 agreement together with subsequent amendments ("Old Agreement(s)") concerning the operation and maintenance of the Orchard Mesa Pool ("Pool" or "the Pool"), the floor plan of which is depicted in the attached Exhibit "A", the northern edge of which abuts a common hallway shared with Orchard Mesa Middle School. The parties agree that this shared hallway and the Orchard Mesa Middle School are the District's sole responsibility.

The Old Agreement(s) have served the Parties well since their inception in 1982; however, the arrangement(s) together with the amendments thereto that have been made over time, in totality, are not perfectly clear and a comprehensive restatement of the terms concerning the Pool would be beneficial to the Parties.

Beginning in 2010 the County determined that it would no longer participate in funding the Pool as it had for many years in accordance with the Old Agreement(s). Despite the County's decision, the Old Agreement(s) were never terminated and recently the County re-considered its position and agreed that it would again fund the Pool on condition that the Old Agreement(s) be restated and amended by the Parties. It is the Parties' intent that this new agreement supersedes and replaces the previous agreement between the Parties.

Each party, the City, the County and the District have certain obligations under the Old Agreement(s) that could be better defined. With better definition the Parties will clearly understand and agree on such important topics as 1) ownership, 2) continued operations and 3) a method for setting a budget and expending funds for the continued operation and maintenance of the Pool.

In the main the Parties agree that the provision of aquatic recreation is important to the public in general and specifically to those persons utilizing the Pool. With that understanding and for the general purposes of meeting the needs of the community, the Parties enter into this agreement as authorized by § 18, Article XIV of the Colorado Constitution, § 29-1-203, C.R.S., § 22-32-122(1), C.R.S. and other applicable law.

The Parties individually and collectively do hereby express their present and future intentions to support the continued success of the Pool on the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and other valuable consideration, the sufficiency of which is acknowledged for both the formation and enforcement of this Agreement, the Parties agree as follows:

1. The term of this Agreement will be for 5 years commencing on the date that it is signed by all parties and ending 5 years thereafter. On mutual agreement of the Parties this Agreement, together with amendments if any, may be renewed for 3 additional 5 year terms. The Agreement is subject to annual appropriation by the Parties of the funds necessary to defray the expenses arising out of or under the Agreement and/or operation of the Pool. In the event of non-appropriation the agreement shall terminate. The Parties agree that consideration paid and given is sufficient to support this Agreement and the enforcement of the same.

2. The Parties agree that because the Pool is located on District property that the District is and shall be the owner of the Pool. As the owner the District shall provide property loss coverage for the Pool/pool building. The City and/or the County may separately procure property coverage(s) insuring their own interests.

3. The City and County shall have no claim to the Pool and/or the real property on which it is located. The Parties may upon expiration or termination agree to a disposition of the Pool and/or equipment but absent an agreement, the District as owner shall have the sole right to use, sell or otherwise dispose of the Pool premises, including but not limited to the real property, as it determines in its sole and absolute discretion. Improvements made to the Pool including but not limited to fixtures as defined by Colorado law shall accrue to the District upon expiration or termination of the Agreement.

4. The Parties shall jointly establish a board or committee ("Pool Board") to provide policy direction relating to the funding and management of the Pool during the term of this Agreement or any extension thereof. The Pool Board shall be comprised of one member of City Council, one member of the Board of Commissioners and one member of the District 51 School Board. The Parties shall each respectively designate and assign a member to the Pool Board.

Appointment shall be by and in a manner customary to each appointing entity. City personnel, as the managers of the Pool shall serve as staff to the Pool Board. Bylaws and/or procedural rules deemed necessary or required for the conduct of the Pool Board shall be drafted and approved by it.

5. The Pool Board shall recommend an annual budget and capital improvement plan(s) to the City Council, the Board of County Commissioners and the School Board; in the event that all three do not agree on a budget the last approved budget shall control until a new budget is approved or this Agreement is terminated. The annual review and budget recommendation by the Pool Board may include but not necessarily be limited to recommending changes to programming, scheduling and/or alternative approach(es) to management such as privatization, creation of a district and/or other alternatives; however, no recommendation shall be effective until formally adopted by the City, the County and the District.

6. The City and the County shall equally share the cost, less the expenses paid by the District, of the operation and maintenance of the Pool. Expenses shall be reviewed by the Pool Board and a budget shall be recommended by the Pool Board for adoption by each member.

a) The Pool Board shall compare the expenses for operation and management services with the revenue derived from the operation of the Pool and the budgeted subsidies and shall recommend the subsequent years' budget(s) such that expenses do not exceed revenue (including a subsidy from the City and County as recommended by the Pool Board and as the same is annually budgeted as provided in paragraphs 4 and 5.)

b) For purposes of this Agreement expenses is defined as and includes City inter-fund charges, which are the costs associated with the City's overhead and management of the operations including, information technology, finance, legal, risk management and other , fees and costs of operation and maintenance of the Pool and all direct staff costs, indirect staff costs of the Recreation Supervisor and Recreation Coordinator assigned to manage and oversee the Pool operations and serve as staff to the Pool Board, hiring costs incurred by the City, lifeguard certification and training (currently Ellis and Associates) fees, mileage and uniform costs.

c) The Pool Board shall recommend the fees and charges for Pool usage to the governing bodies of the City, County and District. All fees and charges collected by the City above and beyond the expenses (except for fees charged by District 51 for its use as the same is further described in paragraph 17) shall be considered revenue for the use and benefit of the Pool Board's recommendation of a budget for the operations and maintenance of the Pool.

7. The Parties acknowledge and agree that the City staff will occasionally recommend major capital expenditures related to the Pool facilities and/or necessary to provide the services referenced in this Agreement. The Pool Board shall consider capital expenditures as part of the annual budget process.

8. The Pool Board shall consider, and if a majority thereof deems it advisable, recommend the establishment of a capital maintenance fund for the Pool. Any and all supplemental budget requests shall first be presented to the Pool Board for its consideration. If and/or when budgeted the City and County shall contribute equally to the maintenance fund in order to maintain the Pool and pool building in a safe and useful condition. The City, as staff to the Pool Board, will make recommendations for improvements that:

a) are planned;

b) will keep the Pool in reasonable compliance with the Americans with Disabilities Act ("ADA"), 42 U.S.C. 1201 *et seq.* and the Virginia Graeme Baker Pool and Spa Safety Act, 15 U.S.C. 8001 *et seq.* and all other applicable legal and safety standards;

c) fund emergency repairs, pending the payment of insurance claim(s), if any; and,

d) fund necessary capital maintenance.

9. All supplies and equipment reasonably required by the City and the cost of the Ellis and Associates Comprehensive Aquatic Risk Management Program ("Ellis") or a comparable program, which shall be purchased by the City and County and shall be accounted for as expenses. A list of supplies and equipment necessary or required to operate the Pool is provided in Exhibit "B" – OM Pool Maintenance – Supplies.

10. In its operation of the Pool the City shall apply the standards and customary practices it requires together with those required by the Ellis Program or a comparable successor to Ellis, called for in the program. A description of the Ellis program is attached as Exhibit C and incorporated by this reference as if fully set forth herein.

11. The City shall promptly notify the Pool Board and the District's Chief Operations Officer if the physical condition of the Pool is not conducive to the safe conduct of any programmed activity in the Pool and/or if maintenance practices may impact in any way, the scheduling of activities in the Pool.

12. With and through the budget process the Pool Board shall be responsible for reviewing and recommending changes to the funding and/or operations of the Pool. In the event that a budget is not approved by the Pool Board or one or more of the governing bodies (City, District or the Board of County Commissioners) then the Pool Board may recommend that the Pool be closed, [or privatized; any recommendation that results in the permanent

closure, or fundamental change to the operation of the Pool as contemplated by this Agreement shall a) require unanimity of the Pool Board and b) absent an emergency as defined herein occur no sooner than 12 months after the recommendation is made to the District, the City and the Board of County Commissioners.

13. For purposes of this Agreement an emergency is:

a) an Act of God or the declaration of a local, state or federal emergency that directly effects the continued ability to operate the Pool; and/or

b) an unforeseen event, such as contamination by bacteria, communicable disease or some other happening and/or order by an agency having authority following an event or happening to close the Pool and/or render it unusable;

c) lacking the occurrence of a) or b) above a failure of any Party to budget and/or fund the Pool is not an emergency.

14. The District agrees to allow the City and County to use the Pool during the term of this Agreement or any extension thereof without need or requirement of compensation to the District; during the term of this Agreement or any extension thereof the District's sole financial obligations to the Pool's operating expenses shall be the payment of premiums for property insurance covering the Pool, internet access in the Pool area (recurring charges and network connection(s) for use by the City for scheduling), and payment for all gas and electric utilities, water and trash service reasonably necessary for operation of the Pool.

15. The City agrees to provide all required labor for the operation of the Pool. Labor for purposes of this Agreement is lifeguards, janitorial staff, swim instructors, guest service representatives and pool managers. The City will pay as an expense of the operation of the Pool all wages, salaries, benefits and workers' compensation insurance premiums and inter-fund charges for the required labor and operations of and for the Pool. Personnel who will work on District property are required to meet the same requirements for background checks, CBI criminal history and fingerprinting as District personnel.

16. The City will provide basic daily maintenance and janitorial services.

17. The City will manage the Pool for and schedule all open swim, swim lesson and special event participants, including for District sponsored uses. The City staff will collect the revenues generated by public swim, swim lessons, private parties and special events and concessions and the revenue shall be used to pay the expenses of the Pool. Fees and charges for District-sponsored users (i.e., physical education classes, swim team practice/meets and District-sponsored events) shall be determined by the District; the District shall not be required to pay the City and/or County for use of the Pool for District purposes.

Fees, if any, collected by the City for the District shall be promptly paid to the District in the amount agreed and determined by the District and the City. District-sponsored uses shall have priority over use by the general public during normal school hours.

18. The City will pay as an expense of the operation of the Pool the liability insurance premiums, for coverage with limits and deductibles to be agreed-upon by the Parties but in any event in amounts no less than the most current limits established by the Colorado Governmental Immunity Act, 24-10-101 *et seq.*, C.R.S., as from time to time amended. The County and the District shall be named as loss payees, with insurance declaration sheets provided to them.

19. As part of the budget the Pool Board shall budget for and create an insurance reserve account for the purposes of paying the property and casualty deductible(s) incurred in the event of a claim(s). The City shall maintain the account for the use and benefit to the parties.

20. The Parties understand and agree that each and every one of them may be protected by, and will rely on and do not waive or intend to waive by any provision of this Agreement, the limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, 24-10-101 *et seq.*, C.R.S., as from time to time amended.

21. To the extent authorized by law and/or insurance the City agrees to indemnify and hold harmless the County and the District and their officers and employees, from and against all liability, claims, demands and expenses, including court costs and attorney fees, on account of any injury, loss or damage, which arise out of or are in any manner connected with the operations and programming work to be performed by the City under this agreement, if such injury, loss or damage is caused by, or is claimed to be caused by, the act, omission, or other fault of the City or any officer or employee of the City.

22. Any person(s) employed by the City, the County or the District that performs work hereunder shall be and remain the employee(s) of the respective party and not agent(s) or employee(s) of another party.

23. No party may assign or delegate its obligations under this Agreement or any portion thereof without the prior written consent of the other Parties.

24. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either Party should fail or refuse to perform according to the terms of this Agreement; such party may be declared in default.

25. This Agreement may, absent an emergency, only be terminated by giving the other parties written notice of no less than three hundred sixty-five (365) days advance notice of termination. In the event of an emergency the Pool

Board shall recommend a means for termination or suspension of this Agreement. Termination shall not prevent any party from exercising any other legal remedies which may be available to it. Any party's failure to appropriate the funds necessary to defray the expenses assumed by each through the adopted budget shall constitute a default and be cause for termination of the agreement.

26. The Parties shall reasonably comply with the applicable provisions of the ADA and any and all other applicable federal, state or local laws and regulations.

27. This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. Only an instrument in writing signed by the parties may amend this Agreement.

28. The traditional rule that ambiguities shall be construed against the drafter is waived.

29. Venue for any action arising out of or occurring under this Agreement shall be in the District Court for Mesa County, Colorado. The agreement shall be controlled by, construed and interpreted in accordance with the law of the State of Colorado.

30. The Parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted for mediation, and if the matter is not resolved through mediation, then the parties may proceed to District Court.

This Agreement has been negotiated and agreed to by, with and through the common effort of the Parties and as such each waives and foregoes the customary rule that ambiguities are construed against the drafter.

In the event of any ambiguities the Parties agree to a liberal construction of the Agreement and to give meaning, purpose and effort to attempting to resolve the ambiguity(ies) in favor of continuing the Agreement for the benefit of the communities that they serve.

The Parties, individually and collectively, intending to be bound to the terms and conditions hereof do sign and bind the entity for which he/she/they sign.

Burghis Ferris 11-26-14
City of Grand Junction - date
Mayor Title

John Justman 11-24-14
Mesa County Board of Commissioners - date
Chair Title

Ray Miller 12-9-14
Mesa County Valley School District 51 - date
President Title

Exhibit A

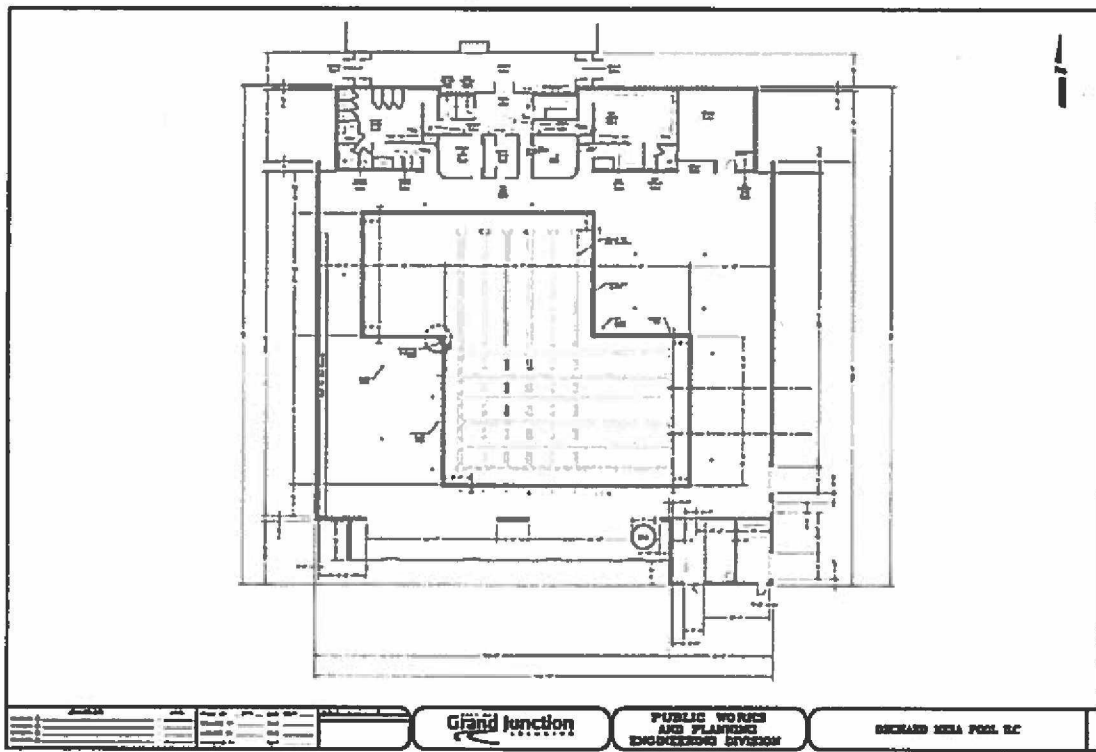


Exhibit B

Orchard Mesa Community Center Pool Operating Supply/Equipment List

Cost of Goods Sold
Swim diapers, goggles, and miscellaneous resale items
Lifeguard supplies

Food Stuffs
Pre-packaged concession items for resale

Operating Supply
Life vests
Cleaning supplies (brushes, cleaners, detergent, etc.)
Lifeguard textbooks
Lifeguard renewal fees
Rescue equipment
Wristbands
Office supplies (printer paper, receipt paper, pens, etc.)

Uniforms/Clothing
Shorts, shirts, and swimsuits
Whistles and lanyards
Fanny packs and hats

Chemicals/Fertilizers
Calcium hypochlorite, shock, muriatic acid, etc.

Repairs/Maintenance
Plumbing repair and equipment
Door repair and equipment
Boiler, solar pump, slide, hot tub, and all other pool mechanical repair and maintenance
HVAC repair and maintenance
Window repair and maintenance
Lighting repair and maintenance

Telephone
* Monthly service fees
Air cards for back-up internet access

Utilities
Gas
Sewer
Solid Waste
Water

Professional Development
Safety School registration and travel expense
Lifeguard instructor training registration and travel expense

Contract Services/Maintenance
Ellis & Associates operational audits
Ellis & Associates retainer fee
Alarm fees
Pest control
Armored car service
Fire alarm inspection
Health Department inspection
Chemical system service

Data Processing
** Annual and replacement IT related charges

Exhibit B cont.

* Telephone includes basic telephone service, voice lines, and long distance service based on the two phones assigned to the pool.

** Includes equipment replacement accrual to replace PCs, laptops, and tablets. PCs and Laptops are replaced every 4 years so the accrual amount each year is 1/4 of the estimated replacement cost for each PC or laptop, and basic charges which is a share of the costs for network infrastructure and support, help desk, desktop software, and copier/printer charges and is based on the number of PCs assigned to each department/division. Two computers are assigned to the facility.

Exhibit C

Ellis & Associates, Inc. (E&A)

Jeff Ellis & Associates, Inc. (E&A) was founded in 1983 with the express purpose of reducing the loss of life due to drowning. Since that time the Mission statement has progressed toward "elimination of drowning events through Proactive Aquatic Risk Management". This began through the creation of a unique lifeguard training, today known as the International Lifeguard Training Program™ (ILTP®). Over the years, Ellis & Associates has built upon the implementation of this training and developed the Comprehensive Aquatic Risk Management Program™ (CARMP™). CARMP™ utilizes the ILTP® Training as a foundation for the overall aquatic safety protection systems deployed at client facilities.

Comprehensive Aquatic Risk Management Program™ (CARMP™)

CARMP™ is the flagship program, providing aquatic risk management consultation that goes way beyond simply "lifeguard training". Its unique services along with 24 hour a day, year round access to resources and experts gives facilities who are serious about aquatic safety all the tools needed to be successful. Among the many services included is the onsite aquatic facility operational safety audit. Audits are designed to identify potential risk exposures before they become catastrophic followed by consultation to reduce or eliminate the identified exposure. Ellis & Associates' CARMP™ client facilities have an unmatched performance record and include some of the largest recreational aquatic venues in the world, hosting millions of visitors each season.

International Lifeguard Training Program™ (ILTP®)

The ILTP® is a comprehensive course that includes complete CPR/Emergency Oxygen/First Aid/AED Training. Practical hands-on training, in conjunction with scenario based training, provides for an experiential training content. When practicing rescue skills for an unconscious Guest In Distress, participants are practicing water skills, and also implementing AR/CPR/FBAO, First Aid skills, Oxygen Administration/BVM/Manual Suction and AED use, all in a single scenario based emergency simulation. All of the skills are integrated – CPR/First Aid/AED/Oxygen/BVM are not strictly classroom based. The textbook information is covered in a classroom setting, however, these skills are then integrated and practiced repeatedly, in scenario based simulated emergencies. These simulated events are never the same; all elements of the skill base must be utilized in order to be successful, and lifeguards must complete given tasks, hands-on, practice with simulated events and real people.

Accomplishments of Ellis & Associates

The REACH of Ellis & Associates:

- E&A works with over 600 organizations in the United States and around the world, servicing approximately 100 million guests annually.
- E&A clients and training centers train over 37,000 lifeguards every year.
- E&A conducts over 1,500 Aquatic Safety Operational Audits every year.

The INNOVATION of E&A:

The first training organization to develop equipment based rescues, utilizing the rescue tube.

Exhibit C cont.

- This increased not only the effectiveness of the rescue, but it made it significantly safer for the rescuer and the guest.
- Other training organizations, such as the American Red Cross have since adopted the use of the rescue tube after it was proven effective by E&A.

The first training organization to incorporate proactive elements to lifeguard training that could be measured and evaluated such as the 10/20 Protection Standard.

- Lifeguards required to be able to see all parts of their Zone of Protection® area and spotting a guest in distress within 10 seconds and subsequently be able to reach the guest in distress within 20 seconds of recognition.

The first training organization to include in-water rescue breathing as part of its training and rescue protocol.

- Other training organizations have since included similar protocol as an option, but not as standard practice.
- The American Heart Association, in its 2010 ECC Guidelines, highlighted the effectiveness of in-water rescue breathing to a guest in distress who can be recognized and reached quickly – something E&A lifeguards are uniquely qualified to do!

Uniquely recognize the need for site-specific training techniques that are appropriate for the many environments and staffing situations. E&A helps our clients, "Make it work!"

- For example, lifeguards are taught techniques to perform suspected spinal injury management with a large team or with two lifeguards regardless of depth of water. They then extend beyond this ability with innovative use of backboard equipment to extricate guests from a pool safely that makes the most effective use of available staff and maximizes the safety of the guest.
- While other training organizations have adopted some of these procedures, they default to a "one size fits all" approach that limits the practical application of skills in unique environments.

The first training organization to include all required training elements in one comprehensive training course, requiring one textbook.

- Other training organizations have since combined some course elements, but E&A remains the only that covers all content in a single textbook.

As of 2005, the first training organization to have a blended-learning course option that includes both an online learning portion and an in-person practical test out.

- Years later, other training organizations have added an online course option to their offerings.

As of 1996, the first training organization to require supplemental oxygen support as a training component and rescue protocol.

- Despite years of evidence that emergency supplemental oxygen is effective treatment of a guest who has been rescued after a submersion event, other training organizations still maintain this as optional.

As of 2000, the first training organization to require the use of automated external defibrillators (AED) as training and rescue protocol.

Exhibit C cont.

- This was instituted years before it became commonplace to even see AED equipment in public places.
- E&A is proud of the role it has played in raising awareness and training in the use of AED equipment for over 14 years.

The first and only training organization that incorporates a one-of-a-kind Comprehensive Aquatic Risk Management Program (CARMP) that works with the lifeguard training to provide systems that create and maintain a culture of safety, reducing or eliminating risk exposures, and ultimately keeping guests safe.

- This accountability-based program focuses on key objective accomplishment with protocols that meet both uniform standards and site-specific needs of each unique aquatic environment.

The first training organization to include accountability audits of lifeguards – Aquatic Safety Operational Audits.

- Lifeguards at E&A CARMP facilities receive a license that requires that all aspects of their position be demonstrable at a "test-ready" level at all times.
- Lifeguards are secretly video recorded while they are performing their lifeguarding duties and evaluated on their ability to maintain the 10/20 Protection Standard, professionalism, protection from the environment, and other behavior components designed to maximize the lifeguard's effectiveness in preventing an incident from occurring in the first place. Next, those lifeguards are subjected to on-the-spot evaluation of their rescue abilities, followed by an administrative evaluation for supervisor and facility. If problems are discovered at any point, they are remediated thus mitigating risk before a catastrophic event can take place.

The first and only training organization that maintains long term data on rescue trends and outcomes, allowing E&A to adjust or refine training when the evidence suggests this is needed.

- Most other training organizations rely on theoretical opinions while we seek to constantly test the norms to ensure that we are always providing the best care possible.

As of 2001, the first and only training organization that evaluates and measures the effectiveness of its lifeguards in both qualitative and quantitative manners. This is accomplished through the Vigilance Awareness Training Program (VAT).

- E&A has utilized its VAT program to train and condition lifeguards to recognize guests in distress at the surface, below the surface and on the bottom of a pool in the actual conditions the lifeguard will be expected to perform. This is then evaluated at the facility and audit levels to make sure the standard is being maintained.

E&A continues to innovate its training and risk management to provide the cutting edge in aquatic safety and education to its clients and ultimately, the industry.