

**JOINT USE/OPERATING AGREEMENT
FOR DISTRICT SWIMMING POOLS BETWEEN
THE ALAMEDA UNIFIED SCHOOL DISTRICT AND THE CITY OF
ALAMEDA**

This Joint Use/Operating Agreement ("Agreement") is entered into between the Alameda Unified School District, ("District") and the City of Alameda ("City") collectively, the "Parties" effective July 1, 2016.

RECITALS

- A. The District is a Unified School District organized under the Constitution and laws of the State of California and the California Education Code. The City is a municipal corporation organized under the laws of the State of California.
- B. The District and the City acknowledge that the City faces a shortage of recreational facilities, including swimming pools, and therefore desires to obtain access to District pools for community recreational purposes and, toward that goal, the City is willing to contribute certain funding under this Agreement toward the cost of improvements and ongoing maintenance of the swimming pools, in exchange for District's agreement to allow City to use the pools for public recreational use during certain specified periods.
- C. The District and the City desire to enter into an agreement until June 30, 2019 providing for the joint use and operation, by the District and the City, of the District's four (4) swimming pools, appurtenant areas, supporting equipment and structures, and locker rooms ("Facilities").

AUTHORITY

Education Code section 10900, et seq., authorizes public entities to cooperate with one another to organize, promote, and conduct programs for community recreation that will contribute to the attainment of general recreational and educational objects for children and adults of this State. Education Code section 10905 specifically authorizes public entities to cooperate with one another to establish, improve, or maintain recreation facilities. Education Code section 10910 authorizes the governing body of any school district to grant the use of any building, grounds, or equipment of the district to any other public authority for community recreational purposes if such use will not interfere with use of the buildings, grounds, and equipment for any other purpose of the public school system.

THEREFORE, DISTRICT AND CITY AGREE AS FOLLOWS:

SECTION 1: PURPOSES AND OBJECTIVES OF AGREEMENT

This Agreement furthers the best interests of the residents of the City and of the District, for their health, safety, and welfare, and is in accordance with the public purposes and provisions of applicable federal, state and local law. An additional purpose of this Agreement is to ensure a cooperative effort between City and District to enable each entity to provide for public use and benefit in the most cost-effective manner.

SECTION 2: TERM

Subject to provisions set forth elsewhere in this Agreement regarding termination, the term ("Term") of this Agreement shall commence as of the date of full execution of this Agreement (the "Effective Date"), and shall remain in effect through June 30, 2019 unless terminated earlier by the parties as described below.

SECTION 3: OPERATING COSTS

3.1 Each Party shall pay 50% of all utility costs associated with the Facilities, including water, electricity, gas, heat, cooling, telephone sewer and refuse collection. These costs are estimated to be \$150,000 each fiscal year.

3.2 Annually, the City and the District will meet and discuss the upcoming year's budget.

SECTION 4: MAINTENANCE, REPAIRS AND REPLACEMENT

4.1 The District shall perform all routine maintenance of the Facilities, including: custodial services; maintenance of associated equipment; preventive maintenance; maintenance of any theft or vandalism; repair and replacement of lights and any other necessary items; and the wages and salaries for any employees, contractors or consultants used to maintain the Facility. The City shall report any maintenance issues of which it becomes aware to the District representative designated in section 4.4 below. Costs to perform routine maintenance shall be allocated equally between the City and the District, except the cost of salary and benefits for a Pool Services Technician to be hired by the District shall be allocated 60% to the District and 40% to the City; provided however, the District shall not be precluded from

providing pool maintenance by outside contractors should the District staffing to provide such maintenance prove not to be cost effective, subject to advanced written approval by the City. Maintenance costs are estimated to be \$85,000 each fiscal year.

4.2 Except as provided in section 4.3 of this Agreement, the District shall replace, or obtain outside contractors to replace, major capital equipment as needed. The costs of such projects shall be borne equally by the District and City.

4.3 The City shall be responsible for the cost of repairing or replacing any District property damaged in connection with City's use of the Facilities under this Agreement.

4.4 Both parties must give their advanced written approval for any maintenance, repair or capital equipment project with costs greater than fifteen thousand (\$15,000). In the case of an emergency project needed to address a health or safety condition, the District shall request City approval and, if such approval is not received within twenty-four (24) hours, District may proceed with the emergency project.

4.5 Each party shall immediately provide to the other party any and all communications from the County of Alameda regarding the Facilities. Communications shall be sent via email and facsimile to the following addresses:

Amy Wooldridge: awooldridge@alamedaca.gov fax: (510)523-4071
Robbie Lyng: rlyng@alameda.k12.ca.us fax: (510)337-7083

4.6 District shall provide to City copies of all maintenance logs upon request.

SECTION 5: SHARED RECREATIONAL USE

Priority of Use

5.1 The District shall have priority use of the Facilities:

5.1.1 From one hour prior to the beginning of the school instructional day to one hour after the end of the school instructional day on school year weekdays per the posted annual school calendar ("Regular School Hours").

5.1.2 Subject to Section 5.2, for District athletic practices and contests and graduation ceremonies.

5.1.3 Notwithstanding Section 5.1.1, City may request to use the Facilities during Regular School Hours and District, in its sole discretion, may allow such use.

5.2 City shall have priority use before and after Regular School Hours.

Scheduling of Use

5.3 A schedule of use of the Facilities shall be subject to quarterly review by the City Director of Recreation and Parks or designee and the District Director of Maintenance, Operations and Facilities or designee.

5.4 The City will schedule the use of the Facilities in accordance with the quarterly review. . The City shall issue appropriate permits to any community users to which it allows access to the Facilities during its priority use time. The City shall provide copies of such permits to the District upon request.

5.5 In the event either party desires to use the Facilities during the other party's priority use period, such request shall be submitted at least thirty (30) days in advance. The parties will make a reasonable attempt to accommodate requests for the party's use during the other party's priority use periods, however once the scheduling meetings have been completed and use scheduled, any alterations will be at the sole discretion of the party with priority use for the time period requested.

User Fees

5.6 In compliance with applicable laws including the Civic Center Act (Education Code section 38130, et seq.), each party shall have the authority to charge admission, user fees, concession sales, or other related fees to the public during its use of the Facilities. The revenue received during a party's programs and activities will remain the property of that party.

5.7 City shall assume responsibility for scheduling all community requests to use the Facilities. City shall timely communicate all pertinent information, including information regarding closure, repairs, or use limitations with all community groups or members who have scheduled use of the Facilities.

Additional Shared Facilities

5.8 City staff shall have access to any District wireless internet services at the Facilities

5.9 City staff shall have access to existing storage space at the Facilities to the extent necessary to perform the City's obligations under this Agreement.

SECTION 6: TERMINATION

Termination without Cause

6.1 Either Party shall have the right to terminate this Agreement by written notification thirty (30) days prior to the effective date of the termination. Neither party shall be required to provide just cause for termination in the written notification.

6.2 Either Party may, upon ten (10) days written notice, terminate the operation of a single site under this Agreement if, in the Party's sole discretion, the costs to repair a site or to render it suitable for public use are prohibitive.

Termination for Cause

District may terminate this Agreement immediately for cause. Cause shall include, without limitation, material violation of this Agreement by City; any act by City exposing the District to liability to others for personal injury or property damage; or notification from the County of Alameda that all or part of the Facilities must be closed to public use. These provisions are in addition to and not a limitation of any other rights or remedies available to the District.

SECTION 7: INDEMNITY AND INSURANCE

Indemnity

7.1 City shall indemnify, reimburse, hold harmless, and defend District, its trustees, officers, employees and agents against any and all claims, causes of action, demands, suits, losses, judgments, obligations, costs, or liabilities, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), arising out of, directly or indirectly, in whole or in part, any injury, death or damage to any person or property under this Agreement as a result of City's negligence or willful misconduct; unless due in whole or in part, directly or indirectly, from the negligence or willful misconduct of District, its employees or agents. This indemnification shall not apply in those instances where District had actual knowledge and failed to inform City of an actual hazardous condition of the premises.

7.2 District shall indemnify, reimburse, hold harmless, and defend City, its officers, employees and agents against any and all claims, causes of action, demands, suits, losses, judgments, obligations, costs, or liabilities,

and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), arising out of, directly or indirectly, in whole or in part, any injury, death or damage to any person or property under this Agreement as a result of District's negligence or willful misconduct; unless due in whole or in part, directly or indirectly, from the negligence or willful misconduct of City, its employees or agents. This indemnification shall not apply in those instances where City had actual knowledge and failed to inform District of an actual hazardous condition of the premises.

7.3 City shall ensure that District is named as an additional insured and indemnitee prior to issuing a use permit or otherwise permitting use of the Facilities.

Self-Insurance

7.4 Each party acknowledges that it is permissibly self-insured under the applicable laws and shall, upon request, provide on an annual basis to the other party adequate proof of self-insurance and excess liability coverage. Each party shall upon request provide to the other a Certificate of Insurance naming the other as an additional insured with respect to the obligations under this Agreement and the use of Premises. Each party shall upon request provide a letter of self-insurance and give a copy to the other party.

City Insurance Responsibilities

7.5 Liability Insurance. City shall, during the term of this Agreement, maintain in force, a combined, single-limit commercial general liability insurance policy in the amount of not less than two million dollars (\$2,000,000) with District, its employees and agents, at City's expense, named as additional insureds under such policy. Such policy shall provide for a thirty (30) day written notice to District of any cancellation or reduction of such insurance. City shall upon request provide District a certificate of insurance evidencing this coverage in a form satisfactory to District upon execution of this Agreement, upon request of District during the term of this Agreement and prior to expiration of any such policy.

7.6 Insurance Limits, Ratings of Insurers and Certificates. It is the intent of the parties that policy limits set herein may be raised from time to time during the Term of this Agreement to account for (i) increases in the charges for the use of the Facilities and (ii) increases in the estimated full replacement cost of the Facilities.

SECTION 8: OTHER PROVISIONS

Notices to District

8.1 Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to District by City shall be in writing and shall be deemed duly served and given when personally delivered to District, to any managing employee of District, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and sent by express mail that allows for tracking, addressed to District at:

Alameda Unified School District
Office of the Superintendent
2060 Challenger Drive, Suite 100
Alameda, CA 94501

Notices to City

8.2 Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to City by District shall be in writing and shall be deemed duly served and given when personally delivered to City, any managing employee of City, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and sent by express mail that allows for tracking, addressed to City at:

City of Alameda
Office of the Recreation and Park Director
2226 Santa Clara Avenue
Alameda, CA 94501

Compliance with All Applicable Laws

8.3 The parties shall keep fully informed of all existing and future state and federal laws and all municipal ordinances and regulations of the City of Alameda which affect this Agreement, as well as all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Parties shall comply with all applicable laws, state and federal and all ordinances, rules and regulations enacted or issued by the City of Alameda.

Binding on Successors and Assigns

8.4 This Agreement shall be binding on and shall inure to the benefit of the executors, administrators, successors, and assigns of the parties hereto.

Partial Invalidity

8.5 If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect unimpaired by the holding.

Resolution of Disputes

8.6 Before resorting to mediation, arbitration or other legal process, the parties shall meet and confer and attempt to amicably resolve any dispute arising from or relating to this Agreement, subject to the following provisions. Any party desiring to meet and confer shall so advise the other party pursuant to a written notice. Within fifteen (15) days after provision of that written notice by the party desiring to meet and confer, the parties shall meet in person and attempt to amicably resolve their dispute. Each party shall send to the meeting a person with full authority to resolve the dispute, and shall be prepared to devote at least an entire day thereto. If any dispute remains unresolved at the end of the meeting, any party to this Agreement shall have the right to invoke the following mediation process. Any dispute that remains unresolved after the meet and confer shall immediately be submitted to non-binding neutral mediation, before a mutually acceptable, neutral retired judge or justice at the San Francisco Office of the Judicial Arbitration and Mediation Service (JAMS). If within five days after the meet and confer the parties are unable to agree upon the selection of a neutral mediator, then the first available retired judge or justice at the San Francisco office of JAMS shall serve as the neutral mediator. The parties agree to commit to at least one full day to the mediation process. The costs of the mediator, if any, will be paid for by each party on an equal basis. If a mediated settlement is reached, no party will be the prevailing party for the purposes of the resolution of the dispute. No party will be permitted to file legal action without first following the provisions in this section.

Execution in Counterparts

8.7 This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Interpretation

8.8 In interpreting this Agreement, it shall be deemed to have been prepared by the parties jointly and no ambiguity shall be resolved against

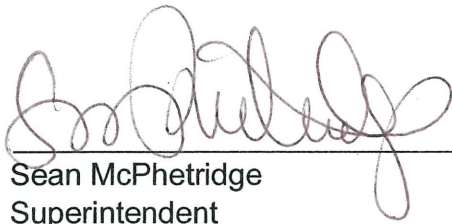
either party on the premise that it or its attorneys was responsible for drafting this Agreement or any provision hereof.

Permits and Licenses

8.9 District, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses that may be required in connection with the operation, use and maintenance of the Facilities.

IN WITNESS WHEREOF, DISTRICT and CITY have executed this Agreement as of the date written on the first paragraph of this Agreement.

Alameda Unified School District



Sean McPhetridge
Superintendent

City of Alameda



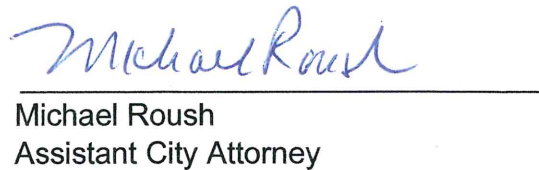
Jill Keimach
City Manager

Recommended for Approval



Amy Wooldridge
Recreation and Parks Director

Approved as to Form
City Attorney



Michael Roush
Assistant City Attorney