

**City of Alameda and Alameda Unified School District
Memorandum of Understanding
Concerning a New City Aquatic Facility**

This Memorandum of Understanding is entered into between the Alameda Unified School District ("District") and the City of Alameda ("City") collectively, the "Parties" effective _____ June, 2019.

RECITALS

WHEREAS, 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 and Charter City, organized under the laws of the State of California.

WHEREAS, the City faces a shortage of recreational facilities, including swimming pools, and therefore desires to construct a new aquatic facility.

WHEREAS, the District owns the Emma Hood Swim Center ("Existing Facility") including the land, buildings and structures located on a portion of Alameda High School, 2200 Central Avenue, Alameda California ("Property") and it has been maintained as an operating pool facility through a Joint Use Agreement between the District and City since 2011.

WHEREAS, the Property qualifies as a "recreational real property" pursuant to Education Code section 17485, et seq.

WHEREAS, in 2019, the Alameda County Department of Environmental Health ("County") issued to the District a Notice of Health Concerns about the condition of the Existing Facility, however, after discussions with the District and the City, the County is allowing the Existing Facility to stay open until May 31, 2019 so that the District water polo team can complete its season; thereafter the Existing Facility will be closed until it is repaired or replaced.

WHEREAS, the District and the City have been working collaboratively to address immediate repair issues at the Existing Facility and also to develop a long-term plan for a new City Aquatic Center.

WHEREAS, since March 19, 2019, a District and City Pool Ad-Hoc Committee, along with District student representatives and community representatives who are liaisons to the Alameda Aquatic Alliance, have met weekly to discuss these issues

WHEREAS, based on the outcome of those discussions, as well as discussions on this matter conducted at public meetings of the District and the City, the District and the City desire to enter into a Memorandum of Understanding ("MOU") that will provide a roadmap that will likely result in the funding and construction of a new City Aquatic Facility ("the new Aquatic Facility").

NOW THEREFORE, in consideration of the foregoing and the mutual promises contained herein and for other good and valuable consideration the adequacy of which is hereby acknowledged, the Parties agree as follows:

SECTION 1: DESCRIPTION OF FACILITIES

A map and description of the Existing Facility is attached hereto as Exhibit A, respectively, and is incorporated herein by reference.

SECTION 2: TERM

The term of this MOU shall commence as of the date of full execution of this MOU (the “Effective Date”), and shall remain in effect, unless terminated earlier by either party as set forth in Section 7, until the earlier of December 31, 2019 or the full execution of a separate property related agreement between the parties setting forth the location of a new Aquatic Facility on District owned property, as well as other terms and conditions concerning the design, construction and operation of a new Aquatic Facility.

SECTION 3: SCHEDULE

The parties shall work diligently and cooperatively to meet the schedule as outlined below with the express goal to begin construction on the new Aquatic Facility by May 31, 2022.

Schedule	Completion Date
MOU between the District and the City	June 30, 2019
Separate property related agreement between the District and the City	December 31, 2019
Complete development of conceptual design for the new Aquatic Facility	July 31, 2020
Confirmed funding mechanisms (Ex: Private donations and/or Infrastructure Bond measure)	July 31, 2020
Potential infrastructure bond measure on ballot	November 31, 2020
Completed final construction documents and all City and County permits received.	February 31, 2022
Begin construction of the new Aquatic Facility	May 31, 2022
Construction and inspections complete and new Aquatic Facility open to the public	December 31, 2023

SECTION 4: SEPARATE PROPERTY RELATED AGREEMENT

4.1 If the District and the City agree upon a location for the new Aquatic Facility that is on District owned property, the parties shall negotiate in good faith a separate property related agreement with the goal to enter into such agreement by no later than December 31, 2019. To the extent applicable, for example, if the new Aquatic Facility is to be constructed on District owned property, the terms of this MOU shall be included in the separate property related agreement. This separate property related agreement may take the form of, but is not limited to, a long-term lease, property exchange between the parties or other form of property interest transfer between the parties.

SECTION 5: FUNDING AND MANAGEMENT OF THE DESIGN AND CONSTRUCTION OF THE NEW AQUATIC FACILITY

5.1 Subject to the terms and conditions of a separate property related agreement concerning the new Aquatic Facility, and subject to the City’s obtaining a secured source of funding, the City will be financially responsible to fund, or arrange for the funding of, the design and construction of the new Aquatic Facility, such funding may include, but not be limited to, an infrastructure bond and private donations. The District will partner with the City and provide political or other support of any funding efforts.

5.2 City will manage all aspects of conceptual design, construction document design, permits and construction of the new Aquatic Facility. The District will serve as a core stakeholder during the planning process to ensure the design incorporates considerations related to student athletics and school site activity and education.

5.3 City and District representatives shall meet on a regular basis during construction to address any issues between the operation of the surrounding District property and the construction of improvements.

5.4 Each party's duties under this MOU are:

District:

- a. Designate a contact person to interact with the City in the administration of this MOU. The duties of the designated contact may include:
 - (1) Serving as a liaison to other District personnel regarding the goals of the City, including working with the City to address logistical matters, obtain signatories as required and to coordinate public outreach (including assistance with fundraising events sponsored for the benefit of the new Aquatic Facility);
 - (2) Serving as a District representative as needed, which may include attending City Council Meetings;
 - (3) Providing any documents needed to secure approval of design and construction permits as needed.

City:

- a. Provide drawings and specifications and a Project schedule for review and approval by the District, which approval shall not be unreasonably denied and shall be reviewed within 30 days of receipt.
- b. Demolish and remove the Existing Facility structures and relocate any other facilities, such as a tennis court, in coordination with, but at no cost to the District;
- c. Fully fund the design and construction of a new Aquatic Facility that is compliant with California Building Codes and regulations, and which shall include, at a minimum:
 - (1) Swimming pool
 - (2) Locker rooms
 - (3) Barrier separating the new Aquatic Facility from adjacent District buildings

SECTION 6: OWNERSHIP AND OPERATIONS, FACILITY USE ALLOCATION, AND FEES

Operations

6.1 The City will own, manage the operations and maintain the new Aquatic Facility.

6.2 The City shall be responsible to design improvements to enhance the safety and organizational layout of the new Aquatic Facility. Any improvement proposed by the City shall be subject to prior written approval from District, which will be timely and not be unreasonably withheld and shall be performed in compliance with all applicable laws.

6.3 Prior to deadline for completion of the conceptual design, the parties shall meet to discuss whether to have the conceptual design reviewed by an AUSD consultant for compliance with the standards and regulations of the Division of State Architects. If the District requests additional improvements related to the DSA compliance and the City agrees to such request, which agreement will not be unreasonably withheld, then the District shall be responsible for the full cost of these additional improvements.

6.4 The City and District will each provide in the separate property related agreement, insurance and indemnification as required.

New Aquatic Facility Use Allocation

6.5 If the new Aquatic Facility is to be constructed on District owned property, AHS aquatic teams (such as swimming, water polo, and diving) will have use priority over private/charter schools and community organizations for the new Aquatic Facility with guaranteed use hours (equivalent to 2019 scheduled use hours) for all AHS aquatic team season practices, games and AHS sponsored tournaments. All other AUSD use may be scheduled as provided in the City Athletic Facility Allocation Policy.

6.6 If the new Aquatic Facility is to be constructed on District owned property, City programs will have first priority use after AHS aquatic team and program use hours as defined above.

6.7 The District will schedule all use through the City's Recreation and Parks Department as provided in established deadlines and procedures. For such use, the District will provide all indemnity and insurance requirements as required by the City.

User Fees

6.8 If the new Aquatic Facility is to be constructed on District owned property, the City will waive fees for AHS aquatic teams for practices, games and daytime physical education class use plus one weekend tournament day per team per season for AHS sponsored events. Any additional AHS use or other District use will pay fees as provided in the approved City Annual Fee Schedule.

6.9 If the new Aquatic Facility is to be constructed on District owned property, in compliance with applicable laws, including the Civic Center Act (Education Code section 38130, et seq.), the parties each shall have the authority to charge admission or other related fees to the public for its use of the new Aquatic Facility. Any revenue so received will be the property of that party; provided, however the City retains rights to all concession operations and revenue arising out of such use by the public.

SECTION 7: TERMINATION

7.1 Prior to the parties' executing a separate property related agreement as provided in Section 4.1, either party shall have the right to terminate this MOU 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.

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 MOU or by law to be served on or given to the District by the City shall be in writing and shall be deemed duly served and given when personally delivered to the District, to any managing employee of the 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 the 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 MOU or by law to be served on or given to the City by the District shall be in writing and shall be deemed duly served and given when personally delivered to the City, any managing employee of the 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 the City at:

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

8.3 Modifications: All modifications must be made by mutual written agreement of both parties. If either party wishes to make modifications to this MOU it shall notify the other party, in writing, of the proposed modifications.

8.4 Compliance with All Applicable Laws: 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 MOU, 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.

8.5 Subcontracts or Assignment: The parties shall not assign their rights, duties or privileges under this MOU, nor shall the parties subcontract or attempt to confer any of their rights, duties or privileges under this MOU on any third party, without the written consent of the District. Any such attempt without the other party's written consent shall be void.

8.6 Binding on Successors and Assigns: This MOU shall be binding on and shall inure to the benefit of the successors and assigns of the Parties.

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

8.8 Execution in Counterparts: This MOU 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.

8.9 Interpretation: In interpreting this MOU, 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 MOU or any provision hereof.8.7 Board and City Council Approval: This agreement shall be subject to approval by the District Board of Trustees and the Alameda City Council.

****Signatures on Next Page****

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

Alameda Unified School District

City of Alameda

By:
Superintendent

Eric Levitt
City Manager

Recommended for Approval

Amy Wooldridge
Recreation and Parks Director

Approved as to Form

Approved as to Form
City Attorney

By:
Title:

Michael Roush
Assistant City Attorney

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