

MEMORANDUM OF UNDERSTANDING
between
Alameda Unified School District
and
Alameda Education Foundation

MIDDLE SCHOOL SPORTS

This Memorandum of Understanding ("MOU") is entered into between Alameda Education Foundation (AEF) and the Alameda Unified School District (DISTRICT). The parties agree as follows:

1. **Services:** AEF shall provide the services ("Services" or "Work") as described in **Exhibit "A,"** attached hereto and incorporated herein by reference.
2. **Terms:** The term of this MOU shall be May 10, 2022 to January 31, 2027.
3. **Compensation:** The services outlined in this MOU shall be at no cost to the DISTRICT.

DISTRICT shall not be liable to AEF for any costs or expenses paid or incurred by AEF in performing services for DISTRICT.

Equipment and Materials: AEF shall provide all equipment, materials, and supplies necessary for the performance of this MOU with the exception of uniforms and practice equipment, while District shall provide structural items such as volleyball nets, basketball hoops, etc. when AUSD facilities are used.

4. **AEF Qualifications / Performance of Services:**

AEF warrants it is specially trained, experienced, competent and fully licensed to provide the Services required by this MOU in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and/or regulations, as they may apply.

5. **Notices:** All notices provided for under this MOU shall be in writing and either personally delivered during normal business hours or sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other party at the address set forth below:

DISTRICT:

Name: Shariq Khan
Site /Dept.: Business Services
Address: 2060 Challenger Drive
Alameda, CA 94501
Phone: 510-337-7067
Email: skhan@alamedaunified.org

AEF:

Name: Victoria Sedlack
Title: Executive Director
Address: PO Box 1363
Alameda, CA 94501
Phone: 510-337-7189
Email: vicki@alamedaeducation.org

Notice shall be effective when received if personally served or, if mailed, three days after mailing. Either party must give written notice of a change of address.

6. **Status of AEF:** This is not an employment contract. AEF, its agents, employees and contractors shall be and act as an independent contractor. The services provided are outside the usual course of the DISTRICT's business, whereas AEF customarily performs the services outlined in Exhibit A. AEF understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of DISTRICT, and are not entitled to benefits of any kind or nature normally provided employees of DISTRICT and/or to which DISTRICT's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. AEF shall assume full responsibility for payment of all Federal,

State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to AEF's employees. In the performance of the work herein contemplated, AEF is an independent AEF or business entity, with the sole authority for controlling and directing the performance of the details of the work, DISTRICT being interested only in the results obtained.

7. Insurance:

1. Unless specifically waived by DISTRICT, the following insurance is required:

- i. If AEF employs any person to perform work in connection with this MOU, AEF shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws when applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease.

Check one of the boxes below:

☒ AEF is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing the performance of the Work of this Contract.

☒ AEF does not employ anyone in the manner subject to the workers' compensation laws of California.

- ii. AEF shall maintain Commercial General Liability insurance, including automobile coverage, with limits of at least One Million Dollars (\$1,000,000) per occurrence (\$2,000,000 aggregate) and Three Million Dollars (\$3,000,000) excess/umbrella coverage for corporal punishment, sexual misconduct, harassment, bodily injury and property damage including accidental death. The coverage shall be primary as to DISTRICT and shall endorse DISTRICT as a named additional insured. Evidence of insurance must be attached. Endorsement of DISTRICT as an additional insured shall not affect DISTRICT's rights to any claim, demand, suit or judgment made, brought or recovered against AEF. The policy shall protect AEF and DISTRICT in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.
- iii. AEF shall include Sexual Abuse/Molestation coverage under their General Liability policy or obtained in separate policies in an amount of not less than One Million Dollars (\$1,000,000) per occurrence (\$2,000,000 aggregate) and Three Millions Dollars (\$3,000,000) excess/umbrella coverage.
- iv. AEF shall maintain non-owned Automobile Liability insurance for bodily injury or property damage in an amount of not less than One Million Dollars (\$1,000,000) per occurrence.

8. **Licenses and Permits:** AEF shall obtain and keep in force all licenses, permits, and certificates necessary for the performance of this MOU.

9. **Assignment:** The obligations of AEF under this MOU shall not be assigned by AEF without the express prior written consent of DISTRICT.

10. **Non-Discrimination:** It is the policy of DISTRICT that in connection with all work performed under Contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, AEF agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and DISTRICT policy. In addition, AEF agrees to require like compliance by all of its subcontractors. AEF shall not engage in unlawful discrimination in employment on the basis of actual or perceived; race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, sexual orientation, or other legally protected class.

11. **Drug-Free / Smoke Free Policy:** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on DISTRICT property. No students, staff, visitors, contractors, or sub-contractors are to use controlled substances, alcohol or tobacco on these sites.

12. **Indemnification:** AEF agrees to hold harmless, indemnify, and defend DISTRICT and its officers, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this MOU. AEF also agrees to hold harmless, indemnify, and defend DISTRICT and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or sub-contractor furnishing work, services, or materials to AEF in connection with the performance of this MOU. This provision survives termination of this MOU.

Both parties fully assume all risks related in any way to COVID-19 and hereby agree to indemnify, defend, and hold harmless the other party, its officers, employees and agents from and against any and all injuries, losses or damages, costs, expenses, claims, lawsuits, judgments, and/or liabilities (including attorney fees) arising directly or indirectly from, or related in any way to, any claims made by or on behalf of any individual(s) for bodily injury, death, loss of use, monetary loss, or any other injury from or related to COVID-19.

13. **Waiver:** No delay or omission by either party in exercising any right under this MOU shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of the MOU.
14. **Termination:** Either Party may at any time terminate this MOU upon 30 days prior written notice to the other Party.
15. **Conduct of AEF:** By signing this MOU, AEF certifies compliance with the following requirements and will provide DISTRICT with evidence of staff qualifications, which include:

1. **Tuberculosis Screening:** AEF is required to screen employees, contractors and volunteers who will be working at DISTRICT sites for more than six hours. AEF affirms that each employee, contractor and volunteer has current proof of negative TB testing on file and TB results are monitored.
2. **Fingerprinting of Employees and Agents.** The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to AEF's services under this MOU and AEF certifies its compliance with these provisions as follows: "AEF certifies that AEF has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all AEF's employees, subcontractors, agents, and subcontractors' employees or agents ("Staff") regardless of whether those Staff are paid or unpaid, concurrently employed by DISTRICT, or acting as independent contractors of AEF, who may have contact with DISTRICT pupils in the course of providing services pursuant to the MOU, and the California Department of Justice has determined that none of those Staff has been convicted of a felony, as that term is defined in Education Code section 45122.1. AEF further certifies that it has received and reviewed fingerprint results for each of its Employees and AEF has requested and reviews subsequent arrest records for all Staff who may come into contact with DISTRICT pupils in providing services to the District under this MOU."
3. **Child Abuse and Neglect Report Act.** AEF will comply with the Child Abuse and Neglect Reporting Act (CANRA) guidelines as Mandated Reporters to report suspicions of possible child abuse to the appropriate agency as stated in California Penal Code 11164-11174.
4. **COVID-19.** AEF shall be responsible for understanding and adhering to all current federal, state and local health orders regarding the COVID-19 virus. The District may impose additional COVID-19 related requirements when accessing their facilities.

In the event that DISTRICT, in its sole discretion, at any time during the term of this contract, desires the removal of any AEF related persons, employee, representative or agent from an DISTRICT school site and, or property, AEF shall immediately, upon receiving notice from DISTRICT of such desire, cause the removal of such person or persons.

16. **No Rights in Third Parties:** This MOU does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
17. **Limitation of DISTRICT Liability:** Other than as provided in this MOU, DISTRICT's financial obligations under this MOU shall be limited to the payment of the compensation provided in this MOU. Notwithstanding any other provision of this MOU, in no event, shall DISTRICT be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this MOU for the services performed in connection with this MOU.

18. **Confidentiality:** AEF and all AEF's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. AEF understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this MOU. AEFs will be permitted access to student data only where permissible under state and federal law and only after executing DISTRICT's Confidentiality MOU Regarding Student Data. Parental consent will be obtained when required.
19. **Conflict of Interest:** AEF shall abide by and be subject to all applicable, regulations, statutes or other laws regarding conflict of interest. AEF shall not hire any officer or employee of DISTRICT to perform any service by this MOU without the prior approval of DISTRICT Human Resources.
- AEF affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between AEF's family, business or financial interest and the services provided under this MOU, and in the event of change in either private interest or services under this MOU, any question regarding possible conflict of interest which may arise as a result of such change will be brought to DISTRICT's attention in writing.
- Through its execution of this MOU, AEF acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event AEF receives any information subsequent to execution of this MOU which might constitute a violation of said provisions, AEF agrees it shall notify DISTRICT in writing.
20. **Force Majeure.** At the District's discretion, the Parties shall be excused from performance hereunder during the time and to the extent that it is prevented from performing in the customary manner by an act of God, fire, flood, war, riot, civil disturbance, terrorism, epidemic, quarantine/shelter in place order, strike, lockout, labor dispute, or any other occurrence which is beyond the control of the parties, when evidence thereof is presented to the other party. The District shall not be responsible for any costs associated with this Agreement while performance is so excused.
21. **Litigation:** This MOU shall be performed in Alameda, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this MOU.
22. **Incorporation of Recitals and Exhibits:** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference. AEF agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Professional Services Contract, the terms and provisions of this Professional Services Contract shall govern.
23. **Integration/Entire MOU of Parties:** This MOU constitutes the entire MOU between the Parties and supersedes all prior discussions, negotiations, and MOUs, whether oral or written. This MOU may be amended or modified only by a written instrument executed by both Parties.
24. **Counterparts:** This MOU and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
25. **Signature Authority:** Each party has the full power and authority to enter into and perform this MOU, and the person signing this MOU on behalf of each Party has been given the proper authority and empowered to enter into this MOU.
26. **Contract Contingent on Governing Board Approval:** DISTRICT shall not be bound by the terms of this MOU until it has been formally approved by DISTRICT's Governing Board, and no payment shall be owed or made to AEF absent that formal approval. This MOU shall be deemed approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.
27. **Contract Publicly Posted:** This MOU, its contents, and all incorporated documents are public documents.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth below.

Alameda Education Foundation


By: *Vicki Sedlack*

Name: Victoria Sedlack

Title: Executive Director

Date: 05/10/2022

Alameda Unified School District

By: 
Shariq Khan (May 11, 2022 08:15 PDT)

Name: Shariq Khan

Title: Asst. Sup. - Business Services

Date: 05/11/2022

EXHIBIT “A” SCOPE OF WORK

- 1. Description of Services to be Provided:** The DISTRICT ceased operating its middle school sports program effective with the 2007-2008 school year. Since 2009, the AEF has funded and managed a middle school sports program in order to provide DISTRICT students with the benefits of a school-based sports program.

RESPONSIBILITIES

For the successful operation of this program, AEF will:

- Fund, unless where otherwise indicated, all aspects of the middle school sports program, including but not limited to coaching stipends, referee costs, AEF program coordinator stipend, non-AUSD facility costs, end of season trophies/awards, and equipment used for competitions. AEF does not pay for practice equipment or uniforms.
- Create a timeline for the program delineating all deadlines related to program participation (e.g., preseason meetings, registration dates, etc.)
- Ensure that all AEF coaches are in contract with AEF and complete all tax-related forms.
- Ensure that all AEF coaches are cleared through a background check (live scanned) and have a negative risk assessment for Tuberculosis.
- Create competitive schedules for each sport, including regular and postseason.
- Organize and lead pre- and post-season meetings.
- Arrange for officials and referees.
- Reserve District and non-District facilities for competitive matches/games/meets.
- Reserve District facilities for team practices upon receipt of practice schedules from school sites. This may be done by a site representative under the AEF site specific credentials.
- Create and update rules and regulations for each sport.
- Maintain rules, schedules, and results on AEF website page.
- Train volunteers or secure positions to perform the tasks related to matches, games, and meets, such as scorekeeping, placers, recorders, etc.
- Communicate regularly with coaches and administrators about responsibilities, timeline, schedules, rosters, and other pertinent information.
- Provide communication on schedules, results, and other relevant information to school sites, AUSD, and public.
- Manage online participant registration system. AEF charges a participation fee to help cover the costs of the program. No student is turned away for inability to pay. AEF manages scholarship requests and keeps the information confidential. An unlimited number of scholarships are available based on the following:
 - Student/family is enrolled in a food assistance program - 90%,
 - Student/family qualifies for assistance under the McKinney-Vento Act, Alameda Point Collaborative, or similar program or is experiencing particular hardship - 100%;
 - Parent/guardian expresses a need for assistance but is not covered under the foregoing conditions - 50%.
- Provide site contact or coach with access to registered participants.
- Create and disseminate a Spectator Code of Conduct to all parents/guardians of registered participants.
- Provide Student-Athlete and Parent/Guardian Code of Conduct contract templates for use by school sites. Work with school sites and coaches to address student-athlete and parent/guardian behavior incidents and issues.

For the successful operation of this program, participating DISTRICT School Sites designated staff shall collaborate with AEF by:

- Supporting AEF Program Principles.
- Recommending coaches with AEF input and support. Coaches are contractors of AEF but substantial weight will be given to the preference of the school administrator or designee.
- Participating in pre- and post-season meetings for each sport.
- Reviewing competition schedule and inform AEF immediately of any schedule conflicts.
- Inform school families about the program, including information about tryouts, schedules, results, and other updates.
- Supporting AEF coaches in hosting on-site registration opportunities for families who do not have computers/internet access at home.
- Coordinating with AEF coaches to establish tryout and practice schedules.
- Supporting AEF as possible in reserving AUSD practice facilities.
- Consulting with coaches on team selection where applicable, to support AEF equity goals.
- Supporting AEF coaches in recruiting volunteers to help with matches, games, and meets.
- Designating a representative from the site to attend all competitive matches. Designee shall support AEF by assisting in managing and addressing the behavior of students and spectators from that school.
- Ensuring that all selected players and their parents/guardians have signed behavioral contracts with the school site. Address student-athlete and parent/guardian behavior issues to the extent reasonably possible and when appropriate
- Working with AEF coaches to monitor GPA compliance and eligibility. AEF requires a 2.0 minimum G.P.A with no single grade of an "F" as of the most recent site grading term. School sites may require a higher standard.
- Supporting the selection and awarding of awards that AEF may provide.

The list of participating school sites includes, but is not limited to the following:

- Bay Farm School
- Encinal Junior Senior High School
- Lincoln Middle School
- Wood Middle School