

**JOINT USE AGREEMENT
FOR DISTRICT FACILITIES BETWEEN
THE ALAMEDA UNIFIED SCHOOL DISTRICT AND THE CITY OF ALAMEDA**

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

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 District possesses the facilities of a classroom, storage and performance space necessary to provide the services for the Alameda Community Band and Alameda Sings! (Alameda Community Chorus) to the community as described in this Agreement on the terms and conditions described herein.
- C. The City of Alameda has the ability to provide the advertisement, registration, and fee collection required to provide this service to the community as described in this Agreement on the terms and conditions described herein.
- D. The District and the City desire to enter into a one (1) year agreement providing for the City's use of the Encinal High School Band Room for the Alameda Community Band, the Alameda High School Band Room for the Alameda Sings! (Alameda Community Chorus), and the Kofman Auditorium for performances (upon completion of scheduled construction).

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 by and 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 June 17, 2019 (the "Effective Date"), and shall remain in effect for a period of one (1) year until June 16, 2020 unless

terminated earlier in accordance with the provisions herein.

SECTION 3: SITE CONDITIONS

4.1 The District allows the City the use of the Encinal High School Band Room for the Alameda Community Band, the Alameda High School Band Room for the Alameda Sings! (Alameda Community Chorus), and the Kofman Auditorium for performances (upon completion of scheduled construction). The facility and equipment must be returned to the same location and condition as found.

4.2 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. Normal wear and tear of any of the property of the District shall not be included within this provision relating to the repair or replacement of damaged property. A District representative must immediately notify the City of any facility damage within 24 hours.

4.3 The District's custodial staff will provide ingress and egress to the Encinal High school Band Room for the Alameda Community Band, the Alameda High School Band Room for the Alameda Community Chorus, and the Kofman Auditorium for performances (upon completion of scheduled construction).

SECTION 5: SHARED RECREATIONAL USE

Priority of Use

5.1 The District shall have priority of use of the facilities but all efforts will be made to make the facilities available during the times requested by the City for the classes at the referenced facilities.

5.2 The District has the right to cancel, change or postpone any of the scheduled dates, with seven (7) days' notice. However, every effort will be made to adhere to the schedule dates and times.

Scheduling of Use

5.3 The City and District agree that a schedule of use shall be agreed upon prior to the use of the facility each term. Reservations (known as "Facilities Use Permits") must be requested at the beginning of the school year for the entire year. The Alameda High School Band Room will be made available on Monday evenings and the Encinal High School Band Room will be made available on Tuesday evenings. Each classroom will be used once per week during the school year for a three hour period and the Kofman Auditorium will be made available for five evening concert events (October, December, March, May, and June).

User Fees

5.4 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 incurred during a party's programs and activities will remain property of the party.

5.5 The District will not charge any fees for the use of these facilities including the Encinal High School Band Room, the Alameda High School Band Room, and the Kofman Auditorium.

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 with 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. 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 agrees to 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 agrees to indemnify, reimburse, hold harmless, and defend City, 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 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.

Self-Insurance

7.3 Each party acknowledges that it is permissibly self-insured under the applicable laws and agrees to provide on an annual basis to the other party adequate proof of self-insurance and excess liability coverage. Each party shall 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 provide a letter of self-insurance and give a copy to the other party.

City Insurance Responsibilities

7.4 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 policies. Such policy shall provide for a thirty (30) day written notice to District of any cancellation or reduction of such insurance. City agrees to 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.

7.5 Insurance Limits, Ratings of Insurers and Certificates. It is the intent of the parties that policy limits set herein shall be raised from time to time during the Term of this Agreement to account for (i) increases in Use Payments for the Premises, (ii) increases in the estimated full replacement cost of the Premises, and (iii) increases in the general marketplace insurance limits for tenancies as defined herein. Insurance is to be placed with insurers with a current A.M. Best Insurance rating of no less than A-minus: VII and subject to the approval of District. City shall furnish District with the original certificates and amendatory endorsements effecting the coverage required.

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 Agreement 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
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
Recreation and Park Director
2226 Santa Clara Avenue
Alameda, CA 94501

Governing Law

8.3 This Agreement, and all matters relating to this Agreement, shall be governed by the laws of the State of California in force at the time any need for interpretation of this Agreement or any decision or holding concerning this Agreement arises.

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. 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). 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.

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

Date: 1/24/2019
By: Shaige Khan
Title: CPBO

City of Alameda

Date: _____
By: _____
Title: _____