

## **REAL PROPERTY LEASE AGREEMENT**

(Alameda Unified School District/City of Alameda)

(Emma Hood Swim Center)

**THIS REAL PROPERTY LEASE AGREEMENT ("Lease")** is between ALAMEDA UNIFIED SCHOOL DISTRICT, a public school district organized and existing under the laws of the State of California ("**Lessor**" or "**District**"), and the City of Alameda, a municipal corporation and charter city ("**Lessee**" or "**City**"). Lessor/District and Lessee/City referred to in this Lease individually as a "**Party**" or collectively as the "**Parties**."

### **RECITALS**

- A. District is the owner of real property on which is located the Emma Hood Swim Center ("Swim Center Property") and the Alameda High School ("the High School Property"). The Swim Center Property and the High School Property are depicted generally on Exhibit A.
- B. The Swim Center Property has been used as "recreational real property" pursuant to Education Code 17485, et. seq. since 1955, but due to issues concerning certain facilities on the Swim Center Property, Alameda County Environmental Health Department has imposed deadlines which could close those facilities in May 2021.
- C. City has made a commitment to create a conceptual design and seek funding opportunities for a new aquatic center on the Swim Center Property which the City would construct, operate and maintain to serve the public, including the District aquatic teams.
- D. No other available publicly owned land in the vicinity of the Swim Center Property is adequate to meet the existing and foreseeable needs of the community for a new aquatic center.
- E. City is the City in which the Swim Center Property is situated in accordance with Education Code section 17489 and desires to lease from the District the Swim Center Property, demolish the existing structures thereon, and construct, operate, and maintain a new aquatic center to serve the public.
- F. District's Board of Education has determined by formal resolution, following the recommendation by a District Advisory Committee, that the Swim Center Property is surplus property. (See Exhibit B.)
- G. On June 25, 2019, District and City worked collaboratively and executed a Memorandum of Understanding ("MOU"), under the terms of which the District

and the City would consider entering into a lease agreement for the Swim Center Property, and the City would take measures to secure funding for a new aquatic center, demolish the existing structures and undertake the design and construction of a new aquatic center. (See Exhibit C.)

- H. To carry out the MOU, this Lease sets forth the terms and conditions by which the District will lease the Swim Center Property to the City.

## **AGREEMENT**

**NOW THEREFORE**, in consideration of the terms, conditions and covenants contained herein, District and City agree as follows:

1. **Possession, Title and Lease**

1.1 Property. City will take possession of and occupy the Swim Center Property under the terms of the Lease. A map depicting generally the Swim Center Property (outlined in red) and the High School Property is attached hereto as Exhibit A and is incorporated herein by reference; the Parties will prepare a legal description of the Swim Center Property once the Parties approve as built drawings for facilities to be constructed on the Swim Center Property and the City has issued a Certificate of Occupancy,

1.2 Title. The District holds title to the Swim Center Property and will continue to hold title through the term of this Lease, except if the Swim Center Property is sold to the City or to a third party.

1.3 Lease. The Lease shall be effective February 1, 2020.

2. **Basic Lease Provisions**

2.1 Address of the Swim Center Property: 2200 Central Avenue, Alameda, CA 94501 (as illustrated and described in Attachment Exhibit A).

2.2 Rent: District shall lease the Swim Center Property at no charge to the City, but subject to the conditions described in this Lease.

2.3 Permitted Use: City shall use the Swim Center Property solely to construct, operate, and maintain a new aquatic center ("City Aquatic Center") to serve the public.

2.4 The following exhibits are attached hereto and incorporated herein by this reference:

Exhibit A General Depiction of the Swim Center and High School Properties

Exhibit B Board and City Resolutions

Exhibit C Memorandum of Understanding

Exhibit D Joint Use Agreement

2.5 Definitions:

2.5.1 Competition pool – A minimum 30-meter (10 lane) pool capable of high school competitive use for swimming, diving and water polo, which conforms with CIF (California Interscholastic Federation) North Coast standards.

2.5.2 Recreation pool – A pool to be used for recreational purposes which will not conform with CIF standards for competitive use.

3. **Term**

3.1 The term of this Lease will be sixty (60) years from February 1, 2020;

3.2 Extension. District and City may extend the term of the Lease upon mutual written agreement for such extension. The City shall make a request to extend the term of the Lease no later than 48 months prior to the expiration of the term of the Lease. The District shall provide a response to such request no later than 36 months prior to the expiration of the term of the Lease.

4. **Termination**

4.1 For Cause. District may terminate this Lease as a remedy for default under Section 23 of this Lease.

4.2 Without Cause. Prior to the City's issuing a request for proposals for the final, detailed design and construction documents for the City Aquatic Center as set forth in Section 6.1.1 or prior to the City's issuing a request for bids for work described in Sections 6.1.3 and/or 6.1.4, either Party without cause may terminate this Lease by written notification to the other Party.

4.3 By Agreement. On conditions acceptable to both Parties, District and City may elect to terminate the Lease as a result of a catastrophic natural event (earthquake, flooding, etc.) which, in the sole discretion of the City, renders repairs to or replacement of the City Aquatic Center financially infeasible; provided, however, prior to the Parties' agreeing to terminate this Lease, the City shall at all times, and regardless of the cause, maintain the Swim Center Property in a safe condition and protect neighboring property owners, tenants and the general public from any known or reasonably foreseeable dangerous condition.

5. **Rent.**

5.1 Rent. For and in consideration of District's leasing of the Swim Center Property to the City without charge, the City shall satisfy the requirements detailed in Paragraphs 6 and 7 below.

6. **Design and Construction of City Aquatic Center.**

6.1 City shall at no cost to the District:

6.1.1 Design the City Aquatic Center, and submit to the District for its approval such design, as well as at any time during the term of the Lease any material changes to the design once approved by the District, which design shall include, at a minimum, a swimming pool, renovated locker rooms, and physical barrier separating the Swim Center Property from the High School Property such that members of the public cannot enter the High School Property from the Swim Center Property at any time.

6.1.2 Deliver to the District for the District's approval prior to requesting bids for, or any major modifications to, the City Aquatic Center specifications, working drawings, and final plans.

6.1.3 In coordination with the District, demolish and remove the existing structures on Swim Center Property including but not limited to the two existing swimming pools, tennis court, pump and other equipment room.

6.1.4 Construct or make major modification to the City Aquatics Center consistent with an approved design that is compliant with all laws, codes, regulations, permits, approvals and requirements of all governmental agencies having jurisdiction over the City Aquatic Center.

6.1.5 Manage all aspects concerning the designing, preparing construction documents, obtaining permits and constructing the City Aquatic Center.

6.1.6 Require that the contractor for the City Aquatic Center provide insurance policies that comply with the insurance policy requirements of the District for similar construction projects and that the District, its officers, employees and agents be named as

additional insureds, and deliver to the District a copy of the contract and a certificate of insurance demonstrating compliance with the insurance requirements of this subsection.

6.1.7 Inform the District in writing at least 30 days prior to the start of the demolition work described in Section 6.1.3 of the commencement date of such work.

6.1.8 Allow the District to record and post on the Swim Center Property a notice of non-responsibility described in California Civil Code section 3094 or any successor statute.

6.1.9 Deliver to the District a completed inspection card to the District within 10 days of the City's issuance of a certificate of occupancy for the City Aquatic Center.

6.1.10 Record a notice of completion for the City Aquatic Center and deliver a copy of such notice to the District.

6.1.11 With materials of equivalent quality to those used in the original structure or property, replace or repair, in consultation with District, any District-owned structures or property damaged as a result of the demolition or construction described in this Section, including, but not limited to, replacing the one regulation-size tennis court.

6.1.12 Meet with the District on a regular basis during the design and construction of the City Aquatic Center to address any issues between the operation of the High School Property and the construction of the City Aquatic Center.

## 6.2 District shall:

6.2.1 Provide to the City any documents needed for the design of the City Aquatic Center and to the City or regulatory agencies any documents needed for the City to secure approval of construction permits.

6.2.2 Designate a contact person to interact with the City during the design and construction of the City Aquatic Center, the duties of such contact person may include:

(a) Serving as a liaison to other District personnel regarding all aspects of the design and construction of the City Aquatic Center, including interacting with the City to address logistical matters, obtaining District signatures as required and coordinating the District's public outreach efforts (including assistance with fundraising events for the City Aquatic Center);

(b) Serving as a District representative as needed, which may include attending City Council or Recreation and Parks Commission meetings.

6.2.3 Consider within 30 calendar days any requests from the City for the District to approve the design of the City Aquatic Center, including the specifications, working drawings, and final plans or to approve any major modifications to the design once approved.

7. **Operation and Maintenance of the City Aquatic Center**

7.1 City shall:

7.1.1 Operate and maintain the City Aquatic Center for public use, provided, however, that from time to time, and for up to 24 months at any one time, the City may close the City Aquatic Center due to the need to repair or replace improvements;

7.1.2 Waive fees for (a) District aquatic teams (such as swim, water polo and diving) for practices and games, including post-season playoff practices and games, (b) District daytime physical education classes, and (c) one weekend tournament day for each aquatic team each season when Alameda High School ("AHS") sponsors the tournament. District shall pay fees to the City for any other use of the City Aquatic Center as set forth in the City's Annual Fee Schedule;

7.1.3 Retain the full amount of any rental or other fees for the use of the City Aquatic Center and the Swim Center Property other than tournament or admission fees for District sponsored tournaments (which fees may be retained by the District),

7.1.4 Allow no concession sales or sales of merchandise at the City Aquatic Center and Swim Center Property unless managed and controlled by the City;

7.1.5 Retain the full amount of concession and merchandise sales conducted at the City Aquatic Center and the Swim Center Property

7.1.6 Within five years following completion of the City Aquatic Center, establish a capital replacement fund to make major repairs to or replacement of the City Aquatic Center over the term of the lease.

7.1.7 Maintain in good condition and repair the City Aquatic Center and Swim Center Property.

7.2 **Allocation of Uses of the City Aquatic Center for District Purposes**

7.2.1 Subject to Section 7.2.2, District aquatic teams (such as swim, water polo, and diving) shall have priority use over all other uses of the City Aquatic Center with guaranteed total hours of 735 hours per year for all District aquatic team regular season practices and games, and AHS sponsored tournaments. Subject to Section 7.2.2, District aquatic teams shall also have priority use of the City Aquatic Center for all District playoff practices, games and tournaments for which they qualify. All other District use of the City Aquatic Center must be scheduled as set forth in the City Athletic Facility Allocation Policy, as such Policy is amended from time to time. City and District staff shall meet bi-annually prior to each aquatic team season to discuss scheduling, logistics and other concerns related to the District's priority use of the City Aquatic Center and District shall receive reasonable use of the City Aquatic Center based on historical use patterns, including morning and afternoon hours. For any

additional usage, the District will share the Competition pool with other community uses, as coordinated between the District and the City.

(a) As used herein, "priority use" for the guaranteed 735 hours means the District, solely for the purposes described in this Section 7.2.1 shall be permitted to use the City Aquatic Center over any other competing request with the understanding the City may use or schedule the use of areas in the City Aquatic Center, such as the Recreation Pool, that are not being used by the District during the District's priority use time. If City and District staff are unable to agree on priority use scheduling, the Parties agree to participate in mediation, the cost of which shall be shared equally between the Parties. If mediation is not successful, the City Council and District Board will decide the scheduling at a joint open session meeting.

(b) Priority use of the City Aquatic Center for playoff practices and games shall be in addition to the 735 hours provided for in Section 7.2.1. Priority use of the City Aquatic Center for playoff practices and games shall not include the use of any pool at the City Aquatic Center other than the Competition pool, unless agreed to by the Parties, terms of which may include the payment of fees for such use.

(c) On a case by case basis, City shall make best efforts to accommodate the District in the Recreation pool for special sporting events and tournaments, terms of which may include the payment of fees for such use.

7.2.2 The District will schedule all uses of the City Aquatic Center through the City's Recreation and Parks Department, following established procedures and requirements including, but not limited to, meeting deadlines and providing indemnity and insurance for such use.

7.2.3 Except for District's use of the City Aquatic Center for the purposes set forth in Section 7.2.1, City programs at the City Aquatic Center shall have first priority over all other uses.

## 8. **Compliance with Law.**

8.1 The Parties shall conduct its business operations to provide a recreational aquatic facility and shall use the Swim Center Property in compliance with all federal, state, and local laws, regulations, ordinances, requirements, permits and approvals applicable to the Swim Center Property. The Parties shall not use or occupy the Swim Center Property in violation of any law or regulation, and shall, upon five (5) days' written notice from District, discontinue any use of the Swim Center Property which is declared by any governmental authority having jurisdiction to be a violation of law.

8.2 **DSA Compliance.** The design and construction of the City Aquatic Center does not fall under the jurisdiction of the Division of the State Architect ("DSA") due to the Swim Center Property not being used for educational purposes. If, however, the District requests or requires any change to the design or construction of the City Aquatic

Center, or any modifications to the City Aquatic Center once constructed, and further requests or requires DSA approval, the District shall pay any additional design, construction, or modification costs in order to meet the requirements of the DSA. If the City determines to change the design or construction of the City Aquatic Center, or any modifications to the City Aquatic Center once constructed, and further requests or requires DSA approval, the City shall pay any additional design, construction, or modification costs in order to meet the requirements of the DSA. Notwithstanding the prior two sentences, if DSA determines the City Aquatic Center falls under DSA's jurisdiction and requires additional modifications to the Swim Center Property and/or the City Aquatic Center, the City Council and the District Board of Trustees will negotiate in good faith to arrive at a cost sharing arrangement. The Parties' failure to come to terms on a cost-sharing arrangement will not be grounds to terminate this Lease.

8.3 Certification. As part of conducting their respective operations at the City Aquatic Center in compliance with all federal, state and local laws as described above and, to the extent their employees are required to be licensed, fingerprinted or otherwise certified for their jobs, the Parties shall ensure that their employees have and maintain current licenses or certifications in good standing.

9. **Compliance with Drug and Alcohol-Free Policy.**

9.1 The Parties shall comply with District's policies applicable to the use of the Swim Center Property, including the requirement of a drug and alcohol-free workplace under Board Policy 4020(a). The Parties shall conduct their respective operations at the City Aquatic Center and their use of the Swim Center Property in compliance with BP 4020(a) and shall require that their employees follow the prohibitions regarding drugs and alcohol on the Swim Center Property. The Parties shall not allow the manufacture, distribution, dispensation, possession or use of any alcoholic beverage, drug or controlled substance as defined in 41 USC § 8101 on the Swim Center Property. These prohibitions apply before, during and after school hours.

10. **Compliance with Insurance.**

10.1 The Parties shall not do or permit to be done anything on the Swim Center Property that will invalidate any fire, extended coverage or any other insurance policy covering the Swim Center Property, or that will make such insurance coverage unavailable on commercially reasonable terms and conditions, and shall comply with all rules, orders, regulations and requirements of the insurers of the Swim Center Property.



11. **ADA Requirements.**

11.1 City shall comply with the Americans with Disabilities Act of 1990 and its accompanying regulations, as amended from time to time ("ADA"). All responsibility for compliance with the ADA relating to the City Aquatic Center and the Swim Center Property shall be exclusively that of the City and not of the District.

12. **No Unlawful Use.**

12.1 The Parties shall not use or knowingly allow the Swim Center Property to be used for any unlawful purpose, nor shall the Parties cause, maintain or permit any nuisance or waste in, on, or about the Swim Center Property. The Parties shall take all reasonable precautions to prevent the Swim Center Property from being used for any unlawful purposes and to prevent any nuisance or waste in, on, or about the Swim Center Property.

13. **Renewal of Lease and Sale of Swim Center Property .**

13.1 Renewal of Lease. The Parties may renew this Lease upon approval by the City Council and District Governing Board.

13.2 Sale of Swim Center Property. If District determines to sell the Swim Center Property, the provisions of Education Code section 17485 and following shall apply and District shall offer to sell the Swim Center Property to the City under Education Code, section 17489 (a)(1)(A). Notwithstanding the prior sentence, the District may offer to sell the Swim Center Property to the City under Education Code, section 17230. The City shall have 180 days from its receipt of a written offer from the District to respond to the offer.

14. **Utilities, Telephone, Personal Property Taxes**

14.1 Utilities. During the Lease, City shall pay directly for all gas, water, electricity, sewer, telephone service, data connectivity, trash collection and other utilities furnished to the Swim Center Property.

14.1.1 City shall pay for any additional utilities or services, including telephone and telecommunications services, installed at the Swim Center Property if requested by the City.

14.1.2 District shall allow City, its employees and agents reasonable access to required utility connections on District property and, without surcharge, allow the joint use of utility lines provided that that all necessary modifications to the utility lines or service connections shall be at no expense to District.

14.2 Failure to Pay. To the extent City fails to make any payment required by this Section 14 and District does so on City's behalf, City shall reimburse District for the cost of such payment upon receipt of an invoice from District.

15. **Parking Facilities.**

15.1 ADA parking stalls may be constructed in the adjacent High School parking lot as required by law for the City Aquatic Center and City and members of the public may park in the AHS parking lot adjacent to the City Aquatic Center during non-school hours when spaces are available.

16. **Use of Existing Facility Prior to Demolition**

16.1 Notwithstanding any other provision of this Lease, the District may continue to access and maintain structures on the Swim Center Property (including the existing pool and tennis court) until the commencement of demolition.

16.2 The Parties shall use the existing Swim Center Property consistent with the terms and conditions of the Joint Use Agreement (Exhibit D) until the commencement of demolition.

17. **Removal of Property.**

17.1 Except for those improvements described in Section 6.1.1 which are to remain on the Swim Center Property, all fixtures and personal property of the City installed or placed on the Swim Center Property during the Lease may be removed by the City at the expiration or earlier termination of the Lease.

17.2 If City fails to remove any fixtures or personal property that it is entitled to remove under Section 17.1 within 30 days of the expiration or earlier termination of the Lease, District may dispose of the property under the provisions of applicable law, the costs of which the City shall be responsible.

18. **Choice of Law, Proper Venue**

18.1 Choice of Law. The laws of the State of California shall govern this lease.

18.2 Proper Venue. For purposes of filing litigation, venue shall be in the County of Alameda.

19. **District Access to the Swim Center Property**

19.1 **Access.** With reasonable notice to the City under the circumstances, City shall permit District, its employees and agents to enter the Swim Center Property for the purpose of making repairs, alterations, or additions to the High School Property..

20. **Liens.**

20.1 City shall keep the Swim Center Property free from any liens arising out of work performed, materials furnished or obligations incurred by City. Any mechanic's lien filed against the Swim Center Property for work claimed to have been done for, or materials claimed to have been furnished to, City, will be discharged by City, by bond or otherwise, within thirty (30) days after such filing.

20.2 Should City fail to discharge any lien of the nature described in 20.1, District may at District's election pay such claim or post a bond or otherwise provide security to eliminate the lien as a claim against its title and the cost for doing so shall be immediately due from City.

21. **Indemnification.**

21.1 **Joint Indemnification.** City shall indemnify District, its Governing Board, its affiliates, officers, agents, contractors and employees (collectively, "District's Agents"), against, and to protect, defend, and save them harmless from, all demands, claims, causes of action, liabilities, losses and judgments, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), brought or claimed by a third party, for death of or injury to person or damage to property arising out of (i) City's use, occupancy, repairs, maintenance, and improvements of the Swim Center Property and all improvements, fixtures, equipment and personal property thereon, and (ii) any act or omission of City, its officers, agents, employees, servants, contractors, invitees and sublessees, except to the extent caused by the negligence or willful misconduct of District or District's Agents. District shall indemnify the City, its officers, agents, employees, servants, contractors and invitees (collectively, "City's Agents"), against, and to protect, defend, and save them harmless from, all demands, claims, causes of action, liabilities, losses and judgments, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), brought or claimed by a third party, for death or injury to person or damage to property arising out of (i) District's use of the City Aquatic Center, and (ii) any act or omission of District, its officers, agents, employees, servants, contractors, invitees and sublessees, except to the extent caused by the negligence or willful misconduct of City or City's

Agents. The City's and District's obligation under this Paragraph 21.1 shall survive the expiration or earlier termination of the Lease.

21.2 City's Personal Property. District shall not be liable to City and City assumes all risk of damage to any fixtures, goods, inventory, merchandise, equipment, records, research, computer hardware and software, leasehold improvements, and other personal property of any nature whatsoever, and District shall not be liable for injury to City's business or any loss of income related to such damage, unless caused by District or District's Agents' willful misconduct or gross negligence.

21.3 Criminal Acts by Third Parties. City shall, at City's expense, obtain security devices, services and coverage to the extent City desires protection against criminal acts on the Swim Center Property. District shall not be liable for injuries or losses caused by criminal acts of third parties on the Swim Center Property.

21.4 Indemnification for ADA Violations. City shall defend, indemnify and hold District's Agents harmless from and against any and all damages, liabilities, costs and expenses (including but not limited to attorneys' fees) incurred by District as a result of any judgment or proceeding against District's Agents in which it is determined that City violated any provision of the ADA relating either to the City's use of the Swim Center Property or City's improvements to the Swim Center Property or both.

## 22. Insurance.

22.1 Commercial General Liability. Commencing on the commencement date (see Paragraph 1.2), and continuing at all times during the Lease, City shall maintain, at City's expense, commercial general liability insurance, on an occurrence basis, insuring District and District's Agents against all bodily injury, property damage, personal injury and other covered loss arising out of the use, occupancy, improvement and maintenance of the Swim Center Property and the City Aquatic Center operated by City on the Swim Center Property. Such insurance shall have a minimum combined single limit of liability per occurrence of not less than \$1,000,000.00 and a general aggregate limit of \$2,000,000.00. Such insurance shall: (i) name District as additional insured; (ii) include a broad form contractual liability endorsement insuring City's indemnity obligations under Section 21.1; (iii) provide that it is primary coverage and noncontributing with any insurance maintained by District; and (iv) provide for severability of interests or include a cross-liability endorsement, such that an act or omission of an insured shall not reduce or avoid coverage of other insureds. Commencing on the commencement date and continuing at all times during the Lease, District shall maintain, at District's expense, commercial general liability

insurance, on an occurrence basis, insuring City and City's Agents against all bodily injury, property damage, personal injury and other covered loss arising out of the District's use and occupancy of the Swim Center Property and the City Aquatic Center. Such insurance shall have a minimum combined single limit of liability per occurrence of not less than \$1,000,000 and a general aggregate limit of \$2,000,000. Such insurance shall: (a) name the City and the City's Agents as additional insureds; (b) include a broad form contractual liability endorsement insuring the District's indemnity obligations under Section 21.1; (c) provide that it is primary coverage and non-contributing with any insurance maintained by the City; and (d) provide for severability of interests or include a cross-liability endorsement, such that an act or omission of an insured shall not reduce or avoid coverage of other insureds.

22.2 "All Risk" Insurance. At all times during the lease, City shall maintain, at City's expense, "all risk" insurance against all personal property, including trade fixtures, equipment and merchandise of City or any sublessee that may be occupying the Swim Center Property in an amount equal to the full replacement value of the personal property.

22.3 Workers Compensation Insurance. At all times during the lease, City and District shall maintain Workers' Compensation insurance in accordance with California law.

22.4 Requirements for Insurance Policies. All of the policies of insurance referred to in this Section 22 shall be written by companies authorized to do business in California and rated A+VII or better in Best's Insurance Guide. Each insurer shall agree that it will give its insured at least ten (10) days' prior written notice before the applicable policy is cancelled for non-payment of premium, and thirty (30) days' prior written notice before the applicable policy is cancelled or altered. Any failure of an insurer to give notice as provided herein shall not be a breach of this Lease. No policy of the City, and no policy of the District, shall provide for a deductible amount in excess of \$500,000, unless approved in advance in writing by the other Party. As to any City policy, any deductible amount under this Section 22.4 shall be paid by the City. As to any District policy, any deductible amount under this Section 22.4 shall be paid by the District. If either Party so requests, the other Party shall deliver to the requesting Party copies of the insurance policies or certificates evidencing such insurance policies, together with evidence of payment of the required premiums, prior to the commencement date. At least thirty (30) days prior to expiration of any policy, each Party shall deliver to the other Party a certificate evidencing renewal, or a certified copy of a new policy or certificate evidencing the same, together with evidence of payment of the required premiums. If City fails to provide to District any such policy or certificate by the required date or within fifteen (15) days prior to expiration of any policy, or to pay the premiums when

required, District shall have the right, but not the obligation, to procure insurance and pay the premiums, in which case City shall reimburse District within 30 days. If District fails to provide to City any such policy or certificate by the required date or within fifteen (15) days prior to expiration of any policy, or to pay the premiums when required, City shall have the right, but not the obligation, to procure insurance and pay the premiums, in which case District shall reimburse City within 30 days.

22.5 Changes to insurance limits. If the insurance limits materially change during the term of the Lease, the Parties will negotiate in good faith to revise the limits.

23. **Defaults and Remedies.**

23.1 Defaults. The occurrence of any one or more of the following events shall constitute a default under the Lease:

23.1.1 The failure by either Party to observe or perform any obligation to be performed by that Party, where such failure continues for a period of thirty (30) days after written notice from the non-defaulting Party to the defaulting Party; provided, however, that if the nature of the default is such that more than thirty (30) days are reasonably required to cure the default, then the defaulting Party shall not be deemed to be in default if the defaulting Party commences such cure within said thirty (30) day period and thereafter diligently continues the same to completion. Such notice shall be in lieu of, and not in addition to, any notice required under state law;

23.1.2 City makes an assignment for the benefit of creditors;

23.1.3 A receiver, trustee or custodian is appointed to, or does, take title, possession or control of all, or substantially all, of City's assets;

23.1.4 An order for relief is entered against City pursuant to voluntary or involuntary proceeding commenced under any chapter of the Bankruptcy Code;

23.1.5 Any involuntary petition is filed against the City under any chapter of the Bankruptcy Code and is not dismissed within ninety (90) days;

23.2 Remedies.

23.2.1 Termination. In the event of a default by City, and at any time thereafter, and without limiting District in the exercise of any right or remedy which District may have, District shall be entitled to terminate City's right to possession of the Swim Center Property by any lawful means, in which case the Lease shall terminate and City shall immediately surrender possession of the Swim Center Property to District. In such event District shall have the immediate right to enter and remove all personal property, and such property may be removed and stored in a public warehouse or elsewhere at the cost, and for the account, of City, all without service of notice and without being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby. In the event that District elects

to so terminate this Lease, then District shall be entitled to recover from City all damages incurred by District by reason of City's default, including:

(a) Any other amount necessary to compensate District for all the detriment proximately caused by City's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result in, including, but not limited to, the cost of restoring the Swim Center Property to the condition required under the terms of this Lease; plus

(b) At District's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

23.2.2 Exercise of Rights. In the event of a default by District, City may exercise any and all rights it has in law or in equity, including specific performance of District's obligations under the Lease and recovery from the District all damages incurred by City by reason of District's default.

24. **Assignment or Subletting.**

24.1 District Approval. Except as provided in the Lease, City shall not, sell, assign, hypothecate or transfer this Lease, or sublet the Swim Center Property or any part thereof, or permit or suffer the Swim Center Property or any part thereof to be used or occupied as work space, storage space, concession or otherwise by anyone other than City or City's employees, without the prior written consent of District in each instance. District retains the right to grant or withhold such consent at its sole discretion.

24.2 Void. Any assignment or subletting of the Swim Center Property without District approval shall be void and shall, at the option of District, terminate the Lease.

25. **Hazardous Material.**

25.1 Disclosure to City. District shall disclose to City any reports, investigations or other documents concerning the presence of any Hazardous Material (as defined in Section 25.6 below) in or on the Swim Center Property about which the District knows.

25.2 Compliance with Law. During the term of the Lease, City, at its sole expense, shall comply with all federal, state and local laws, statutes, ordinances, codes, regulations and orders relating to the receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release and disposal of Hazardous Material in or about the Swim Center Property. City shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Swim Center Property by City, its agents, employees,

contractors, invitees or sublessees, in a manner or for a purpose prohibited by any federal, state or local agency or authority.

25.3 Notice of Spill or Violation. City shall immediately provide District with telephonic notice, which shall promptly be confirmed by written notice, of any and all spillage, discharge, release and disposal of Hazardous Material onto or within the Swim Center Property, which by law must be reported to any federal, state or local agency, and any injuries or damages resulting directly or indirectly therefrom.

25.4 Indemnification. City shall be responsible for and shall indemnify, protect, defend and hold harmless District and District's agents from any and all liability, damages, injuries, causes of action, claims, judgments, costs, penalties, fines, losses, and expenses which arise at any time and which result from City's treatment of Hazardous Material in, upon or about the Swim Center Property. District shall be responsible for and shall indemnify, protect, defend and hold harmless City and its officers, employee and agents from any and all liability, damages, injuries, causes of action, claims, judgments, costs, penalties, fines, losses, and expenses which arise at any time and which result from District's use or treatment of Hazardous Materials in, upon or about the Swim Center Property.

25.5 Obligations Survive Termination. City's and District's obligations under this Section 25 shall survive the expiration or earlier termination of the Lease.

25.6 Definition of Hazardous Material. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the state of California or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) petroleum, (ii) asbestos, (iii) designated as a "hazardous substance" pursuant to Paragraph 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), (iv) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et. seq. (42 U.S.C. Section 6903), or (v) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et. seq. (42 U.S.C. Section 9601).

26. **Miscellaneous.**

26.1 Terms and Headings. Where applicable, the singular includes the plural and the masculine or neuter includes the masculine, feminine and neuter. The paragraph headings of the Lease are



not a part of the Lease and shall have no effect upon the construction or interpretation of any part hereof.

26.2 Time. Time is of the essence with respect to the performance of every provision of the Lease in which time of performance is a factor.

26.3 Consents. Whenever consent or approval of either Party is required, that Party shall not unreasonably withhold or delay such consent or approval, except as may be expressly set forth to the contrary.

26.4 Entire Agreement. The terms of the Lease are intended by the Parties as a final expression of their agreement with respect to the terms as are included herein, and may not be contradicted by evidence of any prior or contemporaneous agreement.

26.5 Severability. Any provision of the Lease which proves to be invalid, void, or illegal, shall in no way affect, impair or invalidate any other provision, and such other provisions shall remain in full force and effect.

26.6 Successors and Assigns. Each of the covenants, conditions, and agreements herein shall inure to the benefit of and shall apply to and be binding upon the Parties and their respective heirs, legatees, devisees, executors, administrators, successors, assigns, sublessees, or any person who may come into possession of the Swim Center Property. Nothing in this Paragraph 26.6 shall in any way alter the provisions against assignment or subletting in the Lease.

26.7 Notices. Any notice or other communication required or permitted to be given hereunder must be in writing and may be given by personal delivery, by facsimile transmission, by electronic mail or by U.S. mail, and if given by personal delivery, facsimile or electronic mail, transmission shall be deemed received on the date of delivery or transmission, and if given by U.S. mail shall be deemed received three (3) days after the time when deposited in the United States Mail if sent by registered or certified mail, addressed to City at the Swim Center Property, or to City or District at the addresses shown below. Either Party may, by notice to the other given pursuant to this Paragraph 26.7, specify additional or different addresses for notice purposes.

District/Lessor:

Alameda Unified School District  
2060 Challenger Dr.  
Alameda, CA 94501  
Attention: Chief Operations Officer

City/Lessee:

City of Alameda  
2263 Santa Clara Avenue  
Alameda, CA 94501  
Attention: City Manager

26.8 Authority to Execute Lease. District and City each acknowledge that it has all necessary right, title and authority to enter into and perform its obligations under the Lease, that the Lease is a binding obligation of such Party and has been authorized by all requisite action under the Party's governing instruments, that the individuals executing the Lease are duly authorized and designated to do so, and that no other signatories are required to bind such party.

26.9 Counterparts. The Lease may be executed in one or more counterparts, each of which shall constitute an original.

26.10 No Partnership. City and District are not partners and nothing herein contained shall be construed to create a partnership or joint venture in any sense, nor to constitute City the agent of District for any purposes.

26.11 Quiet Enjoyment. So long as City is not in default, District covenants that District or anyone acting through or under District will not disturb City's occupancy or use of the Swim Center Property except as permitted by the provisions of the Lease.

26.12 Waiver and Modification. No provision of the Lease may be modified, amended or added to except by a mutual agreement in writing. The waiver by District of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

26.13 Nondiscrimination. District, City and all others who from time to time may use the Swim Center Property with the permission of and on the terms and conditions specified by both Parties shall not discriminate in any manner against any person or persons on account of a person's protected class including but not limited to the providing of goods, services, facilities, privileges, advantages, and the holding and obtaining of employment.

**IN WITNESS WHEREOF**, the Parties have executed the Lease to be effective as of February 1, 2020 ("**Effective Date**").

**DISTRICT:**

ALAMEDA UNIFIED SCHOOL DISTRICT  
A public school district organized and existing  
under the laws of the state of California

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Mialisa Bonta  
Title: Board President

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Pasquale Scuderi  
Title: Superintendent

**CITY:**

CITY OF ALAMEDA  
a Municipal Corporation and Charter City

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Eric Levitt  
Title: City Manager

Approved as to form:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Yibin Shen, City Attorney  
Attorney for CITY OF ALAMEDA

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Seth Eckstein, Fagen, Friedman & Fulfroft, LLP  
Attorney for ALAMEDA UNIFIED SCHOOL DISTRICT

## EXHIBIT A

### GENERAL DEPICTION OF SWIM CENTER AND HIGH SCHOOL PROPERTIES

#### LAYOUT OPTION OF CITY AQUATIC FACILITY—Located at Alameda High School



#### Proposed Alameda Aquatic Facility Components:

Picnic Area and Splash Zone: 85' x 45'

Grass seating area: 160' x 30'

Comp pool: 75' x 98'

Rec Pool: 75' x 64'

Total area = 165' x 260'

**EXHIBIT B**

**BOARD AND CITY RESOLUTIONS**

*To be included after AUSD and City approvals*

**ALAMEDA UNIFIED SCHOOL DISTRICT**  
**Alameda, California**  
**Resolution**

September 10, 2019

Resolution No. 2019-2020.09

**RESOLUTION OF THE ALAMEDA UNIFIED SCHOOL DISTRICT  
BOARD OF EDUCATION DECLARING EMMA HOOD SWIM COMPLEX AT  
ALAMEDA HIGH SCHOOL SURPLUS AND APPROVING ITS LEASE TO THE CITY  
OF ALAMEDA**

**WHEREAS**, the Alameda Unified School District ("District") is currently the fee owner of real property commonly referred to as the Emma Hood Swim Complex located on the campus of Alameda High School ("Emma Hood Property"); and

**WHEREAS**, the District's governing board ("Board") has the responsibility of managing the District's property assets and is given authority under Education Code § 17455 to sell or lease property not needed for school classroom purposes;

**WHEREAS**, the District convened a Surplus Property Advisory Committee ("7-11 Committee"), pursuant to California Education Code § 17388, to determine whether the Emma Hood Property is needed for District classrooms; and

**WHEREAS**, the Emma Hood Property qualifies as suited for outdoor recreational purposes pursuant to Education Code § 17486;

**WHEREAS**, the District approves the recommendations of the Surplus Property Advisory Committee Report dated August 14, 2019 ("7-11 Committee Report") that it is in the best interests of the District for the Emma Hood Property to be declared surplus and to be lease to the City of Alameda pursuant to Education Code § 17485;

**NOW, THEREFORE, BE IT RESOLVED** that the foregoing recitals are hereby adopted as true and correct.

**BE IT FURTHER RESOLVED** that the Board declares the Emma Hood Property to be surplus property and available for potential lease.

**BE IT FURTHER RESOLVED** that the Board finds that the Emma Hood Property in its current state is inadequate to meet the existing and foreseeable needs of the community for recreational aquatic purposes.

**BE IT FURTHER RESOLVED** that the Board authorizes and directs the superintendent or designee to take all necessary actions, including appropriate notifications under Education Code § 17464, for lease of the Emma Hood Property to the City of Alameda in accordance with Education Code § 17485 et seq.

PASSED AND ADOPTED by the following vote this 10<sup>th</sup> day of September, 2019:

AYES: 5 MEMBERS: Bonta, Dailay, Harris, Lynn, Williams


NOES: 0 MEMBERS: \_\_\_\_\_

ABSENT: 0 MEMBERS: \_\_\_\_\_



\_\_\_\_\_  
Mialisa Bonta, President  
Board of Education  
Alameda Unified School District

Attest:

  
\_\_\_\_\_  
Pasquale Scuderi, Superintendent  
Secretary of the Board of Education  
Alameda Unified School District



## **EXHIBIT C**

### **MEMORANDUM OF UNDERSTANDING**

#### **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.

<b>Schedule</b>	<b>Completion Date</b>
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.

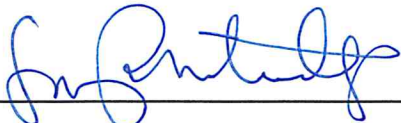
8.9 Interpretation: In interpreting this MOU, it shall be deemed to have been prepared by the parties jointly and no ambiguity shall be resolved against either party on the premise that it or its attorneys was responsible for drafting this MOU or any provision hereof.8.7 Board and City Council Approval: 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**

  
By: \_\_\_\_\_  
Superintendent


**City of Alameda**

  
Eric Levitt  
City Manager

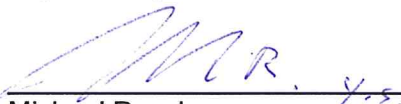
**Recommended for Approval**

  
Amy Wooldridge  
Recreation and Parks Director

**Approved as to Form**

  
By: SETH ECKSTEIN  
Title: ATTORNEY FOR DISTRICT

**Approved as to Form**  
City Attorney

  
Michael Roush  
Assistant City Attorney

## **EXHIBIT D**

### **JOINT USE AGREEMENT**

#### **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](mailto:awooldridge@alamedaca.gov) fax: (510)523-4071  
Robbie Lyng: [rlyng@alameda.k12.ca.us](mailto: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

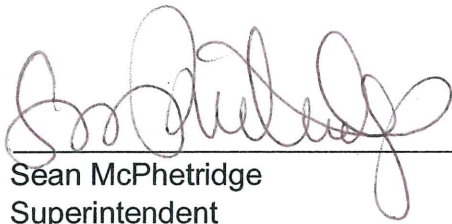
either party on the premise that it or its attorneys was responsible for drafting this Agreement or any provision hereof.

**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

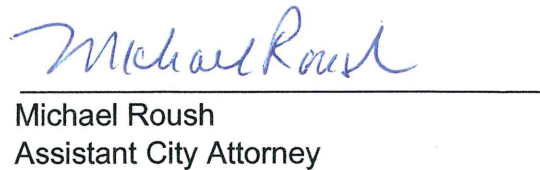
**City of Alameda**

  
Jill Keimach  
City Manager

**Recommended for Approval**

  
Amy Wooldridge  
Recreation and Parks Director

**Approved as to Form**  
City Attorney

  
Michael Roush  
Assistant City Attorney