

**AGREEMENT BETWEEN
CITY OF FRESNO AND FRESNO UNIFIED SCHOOL
DISTRICT FOR USE OF DISTRICT POOLS FOR
SUMMER SWIM PROGRAM**

This Agreement is made and entered into as of this ____ day of _____, 2023, between the City of Fresno, a California municipal corporation (City) and Fresno Unified School District, a public school district (District).

RECITALS

- A. District is authorized by California Education Code Section 10910 to allow for use of District properties for community recreational purposes.
- B. City has an objective of, where feasible, using school sites for community use and to maximize the efficient use, maintenance, and supervision of public facilities.
- C. Expanded community use of District school facilities will maximize utilization of District property and improve opportunities for public and community recreational activity in the City and its various communities.
- D. City and District mutually desire to enter into this Agreement for purposes of expanding access to District's swimming pools, in accordance with the terms granted herein (the Summer Swim Program).

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained, to be kept and performed by City and District, the parties agree as follows:

- 1. **Acknowledgement of Recitals and Definitions.** All foregoing recitals are true and correct and incorporated herein by this reference as though fully set forth herein.
- 2. **Grant of License.** District hereby grants City a no fee license (the License) to use District Pools identified in Exhibit A hereto (Pools) for use in its Summer Swim Program consisting of community recreational swimming, and swim lessons. Sites may be added or modified upon mutual written letter agreement of the parties. The term of the License (the License Term) shall commence on June 12, 2023 and shall continue for a term of one year. At the end of the License Term, upon mutual agreement of the parties, this Agreement may be extended administratively year to year by City and District with an addendum hereto, so long as sufficient appropriations are in place to fund the Summer Swim Program. Either party may terminate the Agreement, in its sole discretion, at any time during the term of the Agreement by providing written notice to the other party specifying an effective termination date at

least thirty days from the date of the notice. Provisions of the License are below.

- a. **Priority of Use.** The priority of use for Pools shall be as follows:
 - 1) District/Civic Center use for aquatics activities and programs
 - 2) City use for Summer Swim Program
- b. **Scheduling of Use.** Pools identified for community recreational swimming and swim lessons are specified in Exhibit A, attached hereto. City will coordinate scheduling with District Facilities Department, not to exceed twelve months in advance of anticipated use. Scheduled use will be based on pool availability and program needs, and the parties shall exercise good faith efforts to agree to the joint use schedule and to resolve any conflicting uses.
- c. **Auxiliary Facilities.** If possible and agreed upon by the District, City's License shall include the ability to make use of auxiliary facilities including restroom facilities and storage areas in reasonable proximity to the pools. Auxiliary facilities and fixed equipment, such as parking lots, bleacher seats, and other fixtures designated for use in connection with such auxiliary facilities, shall be included herein.
- d. **City Use During Regular District Hours.** Subject to scheduling requirements and use priorities specified in Subsections (a) and (b) above, priority use of Pools shall be made available to the City for the Summer Swim Program for no facility use charge.
- e. **Pool Maintenance and Repair.** District is responsible for chemicals, maintenance, and repair of Pools. Outside of standard District maintenance operational hours (Monday-Friday, 7:00 a.m.-2:30 p.m.) and periods of co-use by City and District, City shall test chemical levels of Pools per industry standards and record the information in shared "pool chemical reading log." City shall make reasonable efforts to notify District of any issues with Pools during District maintenance operations hours and follow an agreed upon procedure to notify District outside of standard maintenance operational hours during holidays, evenings, and weekends.
- f. **Downtime for Maintenance.** When Pools are taken out of service for maintenance, repairs, and/or upgrades, activities cannot be scheduled during this time. District will notify City of the estimated downtime period as soon as issues are identified.

3. **City Responsibilities.**

- a. City is responsible for supervision of Pools during City programming set forth in this Agreement, with American Red Cross certified lifeguards, pool assistants and/or aides

provided at all times during the Summer Swim Program. City is not responsible for supervising participants in programming operated by District or other third parties that may occur concurrent with City use. District to provide key(s) to City of Fresno.

- b. City will retain generated program revenue to offset staffing and site-specific instructional supply costs.
- c. City shall provide basic lifeguarding equipment to Pools such as rescue tubes, deck chairs, first aid kits, sunscreen, etc. City may place portable storage units at Pool sites in locations approved by District.
- d. City is responsible for locking and unlocking Pool access gates on days no District activities are scheduled and/or occurring. District and City will generate a locking and unlocking access gates schedule for the summer swim season.

4. **District Responsibilities.**

- a. Where City and District mutually agree upon City's use of auxiliary facilities per Section 2.c., District is responsible for providing custodial services for such auxiliary facilities at its expense.
- b. District shall provide for City's use of lifeguard stands and advanced lifeguarding equipment to Pools such as accessibility lift, shepherd's crook, backboard, etc. When using District equipment, City is responsible for examining and ensuring equipment is in good working condition and acceptable for use. District equipment must be stored and secured as found. Should vandalism and/or theft occur due to City's negligence, City shall be responsible for replacement.
- c. District is responsible for locking and unlocking access gates to Pools on days District activities precede and or extend past the standard City operating schedule. District and City will generate a locking and unlocking access gates schedule for the summer swim season. District to provide key(s) to City of Fresno.
- d. A walk-through will take place at each site prior to the commencement of the Summer Swim Program to orient City staff with specifics related to the pool and auxiliary facilities.

5. **Indemnification.** As authorized by Government Code Section 895.4, during the License Term; City shall indemnify, hold harmless and defend District and each of its officers, officials, employees, agents, and volunteers, from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by District, City or any other person, and from any and all claims, demands and actions in law or equity

(including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of the use of District facilities by City or any of its officers, officials, employees, agents, volunteers, or invitees. City's obligations under the preceding sentence shall apply regardless of whether District, or any of its officers, officials, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs, or damages caused solely by the gross negligence, or caused by the willful misconduct of District or any of its officers, officials, employees, agents, or authorized volunteers. Nothing herein shall constitute a waiver by City of governmental immunities including California Government Code Section 810 et seq.

Throughout the life of this Agreement, City shall pay for and maintain in full force and effect all policies of insurance as required in Section 6, which is incorporated into and part of this Agreement, or as may be authorized or required in writing by District's Deputy Superintendent/Chief Financial Officer or designee at any time and in his/her sole discretion. The required policy(ies) of insurance as stated in Section 4 shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to District or any of its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds available to the named insured.

City shall conduct all defenses at its sole cost. The fact that insurance is obtained by City shall not be deemed to release or diminish the liability of City, including, without limitation, liability assumed under this Agreement. The duty to indemnify shall apply to all claims, applicable to this agreement, regardless of whether any insurance policies are applicable. The duty to defend hereunder is wholly independent of and separate from the duty to indemnify and such duty to defend exists regardless of any ultimate liability of City. The policy limits do not act as a limitation upon the amount of defense and /or indemnification to be provided by City. Approval of purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of City, its officials, officers, employees, agents, volunteers, or invitees.

This section shall survive termination or expiration of this agreement.

6. **Insurance.** It is understood and agreed that District and City maintain insurance policies or self-insurance programs to fund their respective liabilities. Notwithstanding, City shall maintain, at its own cost, the following minimum insurance coverage and shall identify the District as an additional insured under the same:
 - a. Commercial general liability insurance. Said insurance shall not be less than \$2,000,000 per occurrence.
 - b. Commercial automobile liability insurance which shall cover all owned, non- owned and hired automobiles. Said insurance

shall not be less than \$2,000,000 per occurrence.

- c. Workers' compensation and employer liability which shall not be less than \$1,000,000.
- d. Umbrella or excess liability insurance which shall provide the same coverage for additional insureds. The policy shall include coverage for bodily injury to a participant in any activity and shall not include a Participant's exclusion, athletic participant exclusion or a sub-limit liability for bodily injury to a participant.

Evidence of identifying the District as an additional insured shall be provided by the City upon request. Should City contract out any of the above responsibilities or obligation to this Agreement, City will require contractor, in writing, to indemnify and defend District as required in the License Agreement. Contractor will also be required to provide the following insurance requirements in favor of District and City.

- 7. **Funding Contingency.** Except for the indemnity obligations specified herein, the obligations of City and District are limited to and contingent upon appropriation of sufficient funding in each fiscal year during the term of the Agreement.
- 8. **Independent Contractors.** The parties are acting as independent contractors. Neither party, nor any of its officers, associates, agents, or employees shall be deemed an employee, partner, or agent of the other for any purpose. Each party shall retain as program income any and all income generated by its respective use hereunder.
- 9. **Notices.** Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, with postage prepaid, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year first above written.

CITY OF FRESNO, a California
municipal corporation

FRESNO UNIFIED SCHOOL
DISTRICT, a public school district

By: _____
Georgeanne A. White
City Manager

By: _____
Patrick Jensen
Interim Chief Financial Officer

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

REVIEWED BY:

By: _____
Angela M. Karst Date
Deputy City Attorney

Stacey Sandoval
Risk Manager

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Deputy Date

EXHIBIT A

2023 SUMMER SWIM PROGRAM

The 2023 program will operate June 12, 2023 through July 30, 2023.

Community Recreational Swimming

Edison
Fresno
Hoover
McLane
Roosevelt

Swim Lessons Pools

Bullard (small pool only)
Edison
Fresno
Hoover
McLane
Roosevelt
Sunnyside (small pool only)