

AGREEMENT BETWEEN
CITY OF FRESNO AND FRESNO UNIFIED SCHOOL DISTRICT FOR USE OF
DISTRICT POOLS

This Agreement is made and entered into as of this 18th day of May, 2017, between the City of Fresno, a municipal corporation (City) and Fresno Unified School District, a public school district (District).

RECITALS

- A. The District is authorized by California Education Code Section 10910 to allow for use of District properties by other public authorities 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, which such objectives are the intended purpose of this Agreement.
- C. Expanded community use of District school sites 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 the respective parties, the parties agree as follows:

- 1. **Acknowledgement of Recitals and Definitions.** All the 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 the City a no fee license (the License) to use the District Pools identified in Exhibit A hereto (Pools) for use in its Summer Swim Program consisting of community recreational swimming, weekend free swimming, and swim lessons. Sites may be added or modified from time to time upon mutual written letter agreement of the parties. The term of the License (the License Term) shall commence on June 12, 2017, 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 by preparing an addendum hereto. City is authorized to administratively extend this Agreement from year to year 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 notice.

a. Priority of Use. The priority of use for Facilities 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. City will coordinate scheduling with the District utilizing the normal Civic Center process, not to exceed twelve months in advance of anticipated use. Upon mutual written letter agreement of the parties' authorized agents, dates and times may be changed based on availability and program needs. The parties shall exercise good faith efforts to obtain agreement on any amendments to the joint use schedule and to resolve any conflicting uses thereunder. The Pools identified for community recreational swimming and weekend free swimming shall be available a minimum of thirty hours per week, on weekends and weekdays, on dates and times agreed upon by the parties. Weekend free swimming shall be offered a minimum of eighteen days during the License Term. The Pools identified for swim lessons (four, two week sessions) and recreational swimming shall be available during the week for eight weeks. Except as may be otherwise set forth by letter agreement between the parties, District will be responsible for locking and unlocking access gates to the Pools on days that District activities precede and or extend past the standard City operations schedule (see Exhibit B). The City shall be responsible for locking and unlocking access gates to the Pools on days that no District activities are scheduled and or occurring. The District and City will generate a locking and unlocking access gates schedule for the summer swim season.

c. Auxiliary Facilities. City will provide two port potties per site at an agreed upon location for the duration of the summer swim season. If possible and agreed upon by the District, City's License shall also include the ability to make use of auxiliary facilities including restroom facilities and storage areas in reasonable proximity to the pools (as designated from time to time by District). 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 the Sites shall be made available to the City for its Summer Swim Program at no charge during regular District hours of operation (hours during which building maintenance or appropriate supervisory staff are usually scheduled).

e. City's Use Outside Regular District Hours. Subject to the scheduling requirements and use priorities specified in Subsections (a) and (b) above, priority use of the Pool shall be made available to the City for its Summer Swim Program as listed in Exhibit B.

f. Maintenance and Repair. District shall be responsible for all chemicals, maintenance and repair of the Pool. Outside of regular District maintenance operational hours (Monday through Friday, 7:00 a.m. to 2:30 p.m.) and periods of

co-use by City and District, City shall test the swimming pool chemical levels per industry standards and record the information in shared "pool chemical reading log". City shall make reasonable efforts to notify District of any pool issues during District maintenance operations hours and follow an agreed upon procedure to notify the District outside of standard maintenance operational hours during holidays, evenings and weekends.

g. Downtime for Maintenance. Downtime could be required to repair or upgrade the Pool. Activities cannot be scheduled at the site during this maintenance period. The District shall be responsible for notifying the City of the estimated downtime maintenance schedule a minimum of fourteen days in advance.

3. City Responsibilities.

a. The City shall be responsible for, and at all times, supervise its use of the Pool during the City programming set forth in this Agreement. City shall not be responsible for supervising participants in programming run by the District or other third parties that may occur concurrent with City use. City shall hire American Red Cross certified lifeguards, pool assistants and or cashiers to be on duty at all times during the Summer Swim Program.

b. The City will retain generated program revenue to offset staffing and site specific instructional supply costs.

c. The City shall provide basic lifeguarding equipment to the Pool such as rescue tubes, deck chairs, first aid kits, sunscreen, etc. City may place a portable storage unit at pool sites in a location approved by District.

d. City shall pick up litter and debris on site that is accumulated during City usage.

4. District Responsibilities

a. In consideration for services provided by City at the Pools, District will pay City an amount not to exceed \$31,600 within two weeks of the effective date of this Agreement.

b. Where City and District mutually agree upon City's use of auxiliary facilities per Section 3.c., District shall be responsible for providing custodial service of such auxiliary facilities at its expense.

c. District shall provide the use of lifeguard stands and advanced lifeguarding equipment to the Pool such as ADA lift, shepherd's crook, backboard, etc.

5. Indemnification.

As authorized by Government Code Section 895.4, during the License Term, the City shall indemnify, hold harmless and defend the 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 the City or any of his/her/its officers, officials, employees, agents, volunteers, or invitees. The City's obligations under the preceding sentence shall apply regardless of whether District, or any of their 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 their 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, the 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 the Assistant Superintendent/Chief Business 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 the District or any of their 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.

The 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 the City. The policy limits do not act as a limitation upon the amount of defense and/or indemnification to be provided by the City. Approval or 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, the 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 insured's. 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 this 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 the City and the 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.

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

CITY OF FRESNO,
a California municipal corporation

By: _____
Kristina Chamberlin,
PARCS Assistant Director

YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: 
Deputy Assistant K. DOERR

FRESNO UNIFIED SCHOOL DISTRICT,
a public school district

By: _____
Name: Ruth F. Quinto

Title: Deputy Superintendent/CFO

APPROVED AS TO FORM:

By: _____
Name: Andrew DeLaTorre

Title: Risk Manager