

## BOARD AGENDA ITEM

F-4

**Meeting Date:** June 14, 2011

**Item Title:** Annual Joint Use/Operating Agreement for District Swimming Pools between the Alameda Unified School District and the City of Alameda

**Item Type:** Information

**BACKGROUND:** This annual joint use and operating agreement sets forth the agreement between the City of Alameda and the Alameda Unified School District regarding the operation and joint use of the pools. Each party has agreed to assume 50% of all operating and maintenance costs for a one year period. Either party may terminate the agreement in the event the maintenance or facility improvement costs exceed the party's ability to pay.

This short-term agreement is intended to clarify the City and District's responsibilities for the facilities until such time as the parties can agree upon a long-term solution for community swim facilities.

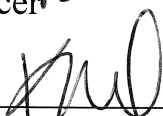
**FISCAL IMPLICATIONS:** The cost for each party is approximately \$ 147,500.

**RECOMMENDATION:** Accept information as submitted.

**AUSD Guiding Principle:** #5-Accountability, transparency and trust are necessary at all levels of the organization.

**Submitted by:** Robert Shemwell, Chief Business Officer<sup>RS</sup>

**Approved for Submission to Board of Education**

  
Kirsten Vital, Superintendent

**ANNUAL JOINT USE/OPERATING AGREEMENT  
FOR DISTRICT SWIMMING POOLS BETWEEN  
THE ALAMEDA UNIFIED SCHOOL DISTRICT AND THE CITY OF ALAMEDA**

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

**RECITALS**

- A. The District is a unified school district organized under the Constitution and laws of the State of California and the California Education Code. The City is a municipal corporation organized under the laws of the State of California.
- B. The District and the City acknowledge that the 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 a one (1) year agreement providing for the joint use and operation, by the District and the City, of the District's five (5) swimming pools, appurtenant areas, supporting equipment and structures, and locker rooms ("Facilities"). The District and City intend to negotiate a more detailed master agreement, which will identify in greater detail the roles and responsibilities of the parties with respect to the modernization and funding of the Facilities. Those negotiations will occur during the term of this one (1) year Agreement.

**AUTHORITY**

Education Code section 10900, et seq., authorizes public entities to cooperate with one another to organize, promote, and conduct programs for community recreation that will contribute to the attainment of general recreational and educational objects for children and adults of this State. Education Code section 10905 specifically authorizes public entities to cooperate with one another to establish, improve, or maintain recreation facilities. Education Code section 10910 authorizes the governing body of any school district to grant the use of any building, grounds, or equipment of the district to any other public authority for community recreational purposes if such use will not interfere with use of the buildings, grounds, and equipment for any other purpose of the public school system.

**THEREFORE, DISTRICT AND CITY AGREE AS FOLLOWS:**

**SECTION 1: PURPOSES AND OBJECTIVES OF AGREEMENT**

This Agreement furthers the best interests of the residents of the City and of the District, for their health, safety, and welfare, and is in accordance with the public purposes and provisions of applicable federal, state and local law. An additional purpose of this Agreement is to ensure a cooperative effort by and between City and District to enable each entity to provide for public use and benefit in the most cost-effective manner.

**SECTION 2: TERM**

Subject to provisions set forth elsewhere in this Agreement regarding termination, the term ("Term") of this Agreement shall commence as of the date of full execution of this Agreement (the "Effective Date"), and shall remain in effect for a period of one (1) year from the last day that this Agreement is executed unless terminated earlier in accordance

with the provisions herein.

### **SECTION 3: OPERATING COSTS**

Each Party shall be pay 50% of all utility costs associated with the Facilities, including water, electricity, gas, heat, cooling, telephone sewer and refuse collection. These costs are approximately one hundred thirty thousand (\$130,000) each fiscal year.

### **SECTION 4: MAINTENANCE, REPAIRS AND REPLACEMENT**

4.1 The City shall perform all necessary and appropriate 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. Costs to perform all maintenance shall be allocated equally between the City and the District after deduction of all use fees received by either Party for use of Facilities. Maintenance costs are approximately one hundred sixty-five thousand (\$165,000) each fiscal year.

4.2 Subject to Section 6 of this Agreement, the District shall undertake the replacement of major capital equipment as needed.

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. Normal wear and tear of any of the property of the District shall not be included within this provision relating to the repair or replacement of damaged property.

4.4 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:

Dale Lillard: [dlillard@ci.alameda.ca.us](mailto:dlillard@ci.alameda.ca.us) fax: (510)523-4071

Robbie Lyng: [rlyng@alameda.k12.ca.us](mailto:rlyng@alameda.k12.ca.us) fax: (510)337-7083

### **SECTION 5: SHARED RECREATIONAL USE**

#### **Priority of Use**

5.1 The District shall have exclusive 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 weekdays from August 31 through June 15 ("Regular School Hours").

5.1.2 Subject to compliance with the terms for scheduling as set forth below, for District athletic practices and contests and graduation ceremonies.

5.2 City shall have priority use before and after Regular School Hours except as set forth in this Section 5.

#### **Scheduling of Use**

5.3 The City and District agree that a schedule of use shall be subject to quarterly review by the City Director of Parks and Recreation or designee and the District Director of Maintenance, Operations and Facilities or designee.

5.5 The District and City will meet once monthly to schedule use of the Facilities in accordance with the guidelines outlined above and to mutually agree on any requests not specifically outlined above.

5.6 In the event either party desires to reserve time during the other party's priority period, such request shall be submitted during the monthly scheduling meeting.

The parties will make a reasonable attempt to accommodate requests for use during priority periods, however once the scheduling meetings have been completed and use scheduled, any alterations will be at the discretion of the party with priority use for the time period requested.

### **User Fees**

5.7 In compliance with applicable laws including the Civic Center Act (Education Code section 38130, et seq.), each party shall have the authority to charge admission, user fees, concession sales, or other related fees to the public during its use of the Facilities. The revenue incurred during a party's programs and activities will remain property of the party.

5.8 City agrees to assume responsibility for scheduling all community requests to use the Facilities. City agrees to timely communicate all pertinent information, including information regarding closure, repairs, or use limitations with all community members who have scheduled use of the Facilities.

## **SECTION 6: TERMINATION**

### **Termination without Cause**

6.1 Either Party shall have the right to terminate this Agreement by written notification thirty (30) days prior to the effective date of the termination. Neither party shall be required to provide just cause for termination in the written notification.

6.2 Either Party may, upon ten (10) days written notice, terminate the operation of a single site under this Agreement if, in the Party's sole discretion, the costs to repair a site or to render it suitable for public use are prohibitive.

### **Termination with Cause**

District may terminate this Agreement immediately for cause. Cause shall include, without limitation material violation of this Agreement by City; any act by City exposing the District to liability to others for personal injury or property damage; 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 agrees to indemnify, reimburse, hold harmless, and defend District, its trustees, officers, employees and agents against any and all claims, causes of action, demands, suits, losses, judgments, obligations, costs, or liabilities, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), arising out of, directly or indirectly, in whole or in part, any injury, death or damage to any person or property under this Agreement as a result of City's negligence or willful misconduct; unless due in whole or in part, directly or indirectly, from the negligence or willful misconduct of District, its employees or agents. This indemnification shall not apply in those instances where District had actual knowledge and failed to inform City of an actual hazardous condition of the premises.

7.2 District agrees to indemnify, reimburse, hold harmless, and defend City, its trustees, officers, employees and agents against any and all claims, causes of action, demands, suits, losses, judgments, obligations, costs, or liabilities, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), arising out of, directly or indirectly, in whole or in part, any injury, death or damage to any person or property under this Agreement as a result of District's negligence or willful

misconduct; unless due in whole or in part, directly or indirectly, from the negligence or willful misconduct of City, its employees or agents. This indemnification shall not apply in those instances where City had actual knowledge and failed to inform District of an actual hazardous condition of the premises.

7.3 City shall ensure that District is named as an additional releasee and indemnitee prior to issuing a use permit or otherwise permitting use of the Facilities.

**Self-Insurance**

Each party acknowledges that it is permissibly self-insured under the applicable laws and agrees to provide on an annual basis to the other party adequate proof of self-insurance and excess liability coverage. Each party shall provide to the other a Certificate of Insurance naming the other as an additional insured with respect to the obligations under this Agreement and the use of Premises. Each party shall provide a letter of self-insurance and give a copy to the other party.

**City Insurance Responsibilities**

7.5 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 policies. Such policy shall provide for a thirty (30) day written notice to District of any cancellation or reduction of such insurance. City agrees to provide District a certificate of insurance evidencing this coverage in a form satisfactory to District upon execution of this Agreement, upon request of District during the term of this Agreement and prior to expiration of any such policy.

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

**SECTION 8: OTHER PROVISIONS**

**Notices to District**

8.1 Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to District by City Agreement shall be in writing and shall be deemed duly served and given when personally delivered to District, to any managing employee of District, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and sent by express mail that allows for tracking, addressed to District at:

Alameda Unified School District  
Office of the Superintendent  
2200 Central Avenue  
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

### **Governing Law**

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

### **Binding on Successors and Assigns**

8.4 This Agreement shall be binding on and shall inure to the benefit of the executors, administrators, successors, and assigns of the parties hereto.

### **Partial Invalidity**

8.5 If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect unimpaired by the holding.

### **Resolution of Disputes**

8.6 Before resorting to mediation, arbitration or other legal process, the parties shall meet and confer and attempt to amicably resolve any dispute arising from or relating to this Agreement, subject to the following provisions. Any party desiring to meet and confer shall so advise the other party pursuant to a written notice. 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.

**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**

**City of Alameda**

Date: \_\_\_\_\_, 20\_\_

Date: \_\_\_\_\_, 20\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_