

**FIRST AMENDMENT TO SECOND AMENDED AND RESTATED AGREEMENT
BETWEEN THE CITY OF BURLINGAME AND
SAN MATEO UNION HIGH SCHOOL DISTRICT FOR THE USE, OPERATION AND
MAINTENANCE OF THE BURLINGAME HIGH SCHOOL AQUATIC CENTER**

This FIRST AMENDMENT TO SECOND AMENDED AND RESTATED AGREEMENT BETWEEN THE CITY OF BURLINGAME AND SAN MATEO UNION HIGH SCHOOL DISTRICT FOR THE USE, OPERATION AND MAINTENANCE OF THE BURLINGAME HIGH SCHOOL AQUATIC CENTER (this “Agreement”) is dated _____, 2021 and is by and between the City of Burlingame (the “City”), a municipal corporation, and the San Mateo Union High School District (the “District”), a public school district, each a “Party,” together the “Parties.”

WITNESSETH

WHEREAS, in June 2018 the District began construction to replace the swimming pool deck when unknown structural defects in the pool shell were found.

WHEREAS, it was in the best interest of the District and City to demolish and replace the existing pool shells for the competition and warm up pools, demolish and install a new pool deck and associated underground utilities, and to make renovations to the mechanical room; and

WHEREAS, the pool opened in late 2019; shortly thereafter, the County issued a COVID-19 related shelter-in-place order, effective March 17, 2020, that greatly altered the use of the pool; and

WHEREAS, the Second Amended and Restated Agreement between the City of Burlingame and San Mateo Union High School District for the Use, Operation and Maintenance of the Burlingame High School Aquatic Center (the “Second Amended and Restated Agreement”) included a twelve (12) month period (the One-Year Period) from the date of the filing of the Notice of Completion to determine the shared use of the pool, and until the completion of the One-Year Period, the cost sharing allocation was 50% City and 50% District; and

WHEREAS, pool usage since March 17, 2020 has been skewed by the restrictions associated with the COVID-19 shelter-in-place orders, necessitating a modification to the One-Year Period; and

WHEREAS, due to the unpredictability of the COVID-19 pandemic and restrictions set by the County Health Department, the Parties will meet no later than the 2nd quarter of 2021 to determine when to start the One-Year Period; and

WHEREAS, the 50% City and 50% District cost share will continue until the completion of the modified One-Year Period; and

WHEREAS, all terms and conditions of the August 22, 2019 agreement not amended below remain in effect.

NOW, THEREFORE, for valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Definitions.** All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Second Amended and Restated Agreement.

2. **Amendment to Section 4.a of the Second Amended and Restated Agreement.** Section 4.a of the Second Amended and Restated Agreement is amended to read:

4.a **City Share.** The City Share of Maintenance and Operation Expense shall be 50% until such time as a twelve (12) month period (the “One-Year Period”) can be set to determine the share used. If the parties do not agree to an earlier date, the “One Year Period” will begin on July 1st, 2021. However, the parties further agree that on January 1st, 2023, the City Share of Maintenance and Operation Expense will be recalculated based on the City Share Formula in Exhibit C using the data from calendar year 2022. Following this year, the City Share of Maintenance and Operation Expense for the remainder of the Term of this Agreement shall be equitably adjusted based on a formula using the hours each Party uses the Competition Pool, the hours of shared uses, and the hours of unused time, as set forth in **Exhibit C**, attached hereto and incorporated herein by this reference.

3. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same Agreement, and shall become a binding Agreement when one or more counterparts have been signed by each of the parties and delivered to the other party. Electronic copies of signatures hereto shall be deemed originals.

4. **No Other Changes.** Except as expressly modified by the terms of this Agreement, the Second Amended and Restated Agreement remains unchanged and in full force and effect.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the day and year first above written.

CITY OF BURLINGAME
A Municipal Corporation

APPROVED AS TO FORM:

By: _____
Name: Lisa K. Goldman
Its: City Manager

By: _____
Name: Scott Spansail
Its: Acting City Attorney

ATTEST:

By: _____
Name: Meaghan Hassel-Shearer
Its: City Clerk

SAN MATEO UNION HIGH SCHOOL
DISTRICT

By: _____
Name: Kevin Skelly, Ph.D.
Its: Superintendent

By: _____
Name: Sean Absher
Its: District Special Counsel

ATTEST:

By: _____
Name: _____
Clerk Board of Trustees