

28E Agreement for Swimming Pool Use, Operation and Maintenance

Between

City of Cedar Falls, Iowa

And

Cedar Falls Community School District

Recitals

This Agreement is made on the 20th day of June, 2023, by and between the City of Cedar Falls, Iowa (the "City"), and the Cedar Falls Community School District (the "School District").

WHEREAS, the City is an Iowa local government existing under the provisions of Iowa Code Chapter 372; and

WHEREAS, the School District is located in Cedar Falls, Black Hawk County, Iowa, is governed by the School Board of Directors, and pursuant to Iowa Code § 297.22, the board of directors of any school district is provided with the power to sell, lease, exchange, give or grant or accept any interest in real property to, with or from any municipal corporation if the real property is within the jurisdiction of both the grantor and the grantee; and

WHEREAS, the City is responsible for providing recreational and athletic services to the Cedar Falls general public as part of its comprehensive recreational and leisure activities programs; and

WHEREAS, the City's financial contributions will total \$8,000,000 to the construction of a new \$21,000,000 swimming facility to be located on the campus of Cedar Falls High School (the "Swimming Pool"); and

WHEREAS, the City and the School District will benefit from the joint use, operation and maintenance of the Swimming Pool to meet the needs of their respective constituencies; and

WHEREAS, the City and the School District have determined that it is in their best interests and in the best interests of the students and patrons of the School District as well as the residents of Cedar Falls to establish rules and procedures for the cooperative use, operation and maintenance of the Swimming Pool.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth below, the City and School District mutually agree as follows.

Agreement

1. Purpose. The purpose of this Agreement is for the City and the School District to jointly utilize the Swimming Pool to meet the athletic, recreational and other needs of the students and patrons of the School District as well as the residents of the City; and to share in the operation, repair, capital and maintenance costs of the Swimming Pool as set forth in this Agreement.
2. Effective Date; Duration. This Agreement shall become effective as of the date it is filed with the Iowa Secretary of State. The term of this Agreement shall be twenty years, unless terminated earlier as provided for in Paragraph 17. This Agreement shall be automatically extended for additional terms of two years each unless written notice of non-renewal is provided by the City or the School District prior to the expiration of the initial term or any extension.
3. Governance. No separate legal entity shall be created for the governance or administration of the terms or subject matter of this Agreement. This Agreement shall be administered by a Joint Pool Committee consisting of members of City staff and members of School District staff as more particularly set forth in Paragraph 6.
4. Description of Swimming Pool. The facility that is subject to this Agreement is located at Cedar Falls High School, 2701 W. 27th St., Cedar Falls in the northeast area of the property. It includes the pool and the parking lot to its northeast and is identified in Exhibit "A" attached. The Swimming Pool shall be owned by the School District. The City shall possess the right of usage of the Swimming Pool as set forth in this Agreement, and no additional approvals, permits or agreements are necessary except as set forth in this Agreement.
5. Approvals. This Agreement is subject to approval by the City Council of the City and the Board of Directors of the School District, respectively.
6. Joint Pool Committee. Upon approval of this Agreement there shall be appointed a Joint Pool Committee that shall govern operation of the Swimming Pool. No compensation shall be paid to members of the Committee for such service.
 - A. Composition. The Joint Pool Committee shall consist of the persons holding the following positions:
 1. From the City: Director of Community Development; Manager of Recreation and Community Programs; Recreation Program Supervisor (Aquatics).
 2. From the School District: Chief Financial Officer; Building and Grounds Director; Activities Director.
 - B. Meetings. The Joint Pool Committee shall meet no less than four months prior to Swimming Pool opening and then quarterly thereafter through the first two years of Swimming Pool operation. After two full years of operation the Joint Pool Committee

shall meet bi-annually. After three full years of operation the Joint Pool Committee shall meet at least annually.

- C. Chair. A chair of the Joint Pool Committee shall be elected by the other members to serve a two-year term. The chair shall convene meetings according to the schedule set forth above, or more frequently as circumstances dictate, and shall preside over meetings. The position of chair shall rotate between representatives of the City and the School District every term. In the event that the Committee is at an impasse (i.e., 3-3 vote) on any issue the Chair's vote shall be determinative.
 - D. Powers and Duties. The Joint Pool Committee shall be responsible for budgeting, determining capital expenditures, establishing rental fees, scheduling, necessary repairs and maintenance, usage rules, use agreements, all as further delineated in this Agreement, as well as other items necessary for the safe and efficient operation of the Swimming Pool.
7. Budget. The Joint Pool Committee shall develop and approve a budget for the Swimming Pool on an annual basis consisting of the following elements:
- A. Operating Costs and Payment.
 - 1. Operating costs shall consist of the expenses of providing a safe and clean natatorium facility for all users such as maintenance of the building, building insurance, lighting, heating/cooling, mechanical functions of the pool itself, locker rooms and all other related areas, as well as other costs by mutual agreement. It also includes cleaning of the natatorium which shall include cleaning the locker rooms and changing rooms (toilets, urinals, sinks, floors, removing trash, etc.), the offices/meeting room (removing trash, floors, etc.), hosing the pool deck and cleaning seating areas, vacuuming the pool consistently, cleaning items such as scum rings that may occur, and snow removal of the parking lot. Operating costs shall be shared by the City and the School District on a 50-50 basis.
 - 2. The School District shall pay operating costs as incurred, subject to fifty percent (50%) reimbursement by the City. The School District will provide an estimate of the first six months' operating expenses to the City on or about December 1st of every year. On or about June 1st each year, the School District shall provide to the City an itemized statement of operating costs for the full fiscal year. Payment by the City for its fifty percent (50%) share is due within thirty days of billing from the School District.
 - B. Capital Costs and Funding.
 - 1. Capital costs shall consist of major repair or replacement items, including but not limited to, electrical panel, pumps, filters, interior and exterior repairs and upgrades, and other significant items. The Joint Pool Committee shall determine at least annually capital costs for the next fiscal year so that each party is able to budget accordingly for each party's share of such upcoming capital costs.

8. Operation of the Swimming Pool. The Swimming Pool shall be managed and operated on a day-to-day basis by the School District in compliance with State of Iowa regulations related to pool operation and maintenance. Swimming Pool operation shall be overseen by at least one State of Iowa recognized Certified Pool Operator who shall be available, either in person or immediately on call, when the pool is in use. Such certified pool operator(s) shall be employed or contracted by the School District.
9. Rental Fee. An event that is not sponsored by the City or by the School District shall be subject to a rental fee. Such event must be scheduled at a time other than when the School District has priority (see Paragraph 10A). The rental fees and deposit shall be established by the Joint Pool Committee on an annual basis. The rental fee shall be itemized and cover the estimated additional costs to operate the Swimming Pool during the period of rental such as for utilities, cleaning, pool use, multi-purpose room, and staff for the event. The rental fee shall entitle the user access to areas rented which may include the pools, multi-purpose room, locker rooms and public parking area during the period of the rental. Rental users shall be expected to leave the areas rented in substantially the same condition as they were found and in a clean, safe and sanitary condition at the conclusion of the rental. No permanent signs or fixtures may be placed at the Swimming Pool by rental users without advance written authorization by the School District. The Joint Pool Committee shall have the authority to establish reasonable rules and regulations for rental users, participants and guests.
10. Scheduling.
 - A. Use of the Swimming Pool shall be prioritized as follows:
 1. School District allocated pool time. This includes, but is not necessarily limited to, School District sponsored classes or functions as well as School District programs.
 2. City allocated pool time. This includes, but is not necessarily limited to, City sponsored programs, classes and trainings, as well as local swim team practices, rentals and public open swimming.
 - B. The City shall be allocated a minimum of fifty percent (50%) of available pool time. Available pool time shall include all hours that the Swimming Pool is open for use but shall not include 10:00 p.m. – 5 a.m. each day and Sunday mornings from 5 a.m. – noon. It is contemplated that City allocated pool time shall be generally used as follows:
 1. City sponsored programs, classes and trainings as well as the public open swimming are primarily to be held in the early morning, afternoon, and weekends when school is not in session.
 2. When school is in session, the City may hold City sponsored programs, classes or trainings by mutual agreement with the School District and as approved by the Joint Pool Committee.
 3. During the summer, the City may fully use the Swimming Pool during daytime hours. The parties agree that for purposes of this Agreement the summer is

considered to be from the day after the last day of school until two weeks prior to the start of new school year.

- C. The School District shall develop and update on a weekly basis a calendar of Swimming Pool usage that shows the times of various usages with sufficient detail to determine if the usage falls within School District allocated pool time or City allocated pool time. Said calendar shall be made available to the Joint Pool Committee, with read/write access.
 - D. Each party is responsible for supervision over Swimming Pool use during its allocated pool time.
 - E. The parties agree that each will leave the Swimming Pool in substantially the same condition as it was found and in a safe, clean and sanitary condition at the conclusion of each party's allocated pool time.
- 11. Concessions. Concessions shall not be available during City allocated pool time except as determined by the School District.
 - 12. Parking. Users during City allocated pool time shall park vehicles in the area designated as "Pool Parking" in Exhibit "A" attached. Other areas shall be available, if needed.
 - 13. Termination of Previous Agreement. The Cooperative Agreement For Use of Swimming Pools dated June 8, 2021, executed by the parties, is deemed terminated without the necessity of further action upon opening of the Swimming Pool at 2701 W 27th St.
 - 14. Insurance, Indemnification and Hold Harmless. By August 1st each year during the term of this Agreement, including any extensions, the parties shall furnish to each other, upon request, written evidence of applicable insurance or self-insurance coverage, covering the use of the Swimming Pool.

To the extent authorized by the Iowa Constitution and Code of Iowa, the City and the School District each shall indemnify, defend and hold harmless the other party, including the other party's elected and appointed officials, employees, volunteers, boards and commissions and/or authorities and their board members, administrators, agents and assigns, and their insurers, for all claims, damages or causes of action whatsoever for the negligence or intentional misconduct of the indemnifying party and the indemnifying party's elected and appointed officials, employees, volunteers, boards and commissions and/or authorities and their board members, administrators, agents and assigns working on behalf of the indemnifying party, arising out of or in any way connected with the use of the Swimming Pool or the repair or maintenance of the Swimming Pool.

The City and the School District each hereby release the other party and the other party's elected and appointed officials, employees, volunteers, boards and commissions and/or authorities and their board members, administrators, agents and assigns, and their insurers, from and against any and all liability or responsibility to the other party by way of

subrogation or otherwise for loss or expense related to liability, property, and/or workers compensation, unless such loss or expense is due to the negligence or intentional misconduct of the other party, but then only to the extent that the other party and the other party's elected and appointed officials, employees, volunteers, boards and commissions and/or authorities and their board members, administrators, agents and assigns working on behalf of the other party does not have governmental immunity from such loss or expense.

15. Amendments. This Agreement may be modified by written amendment approved by the parties. Such amendment must be filed with the Iowa Secretary of State.

16. Termination.

A. For Cause. Prior to its expiration, a party may terminate this Agreement upon a material breach by the other party, provided that the party in breach is given a minimum of thirty days written notice of breach and the opportunity to cure such breach within the notice period. If the breach is not cured within said period, or within any reasonable extension agreed upon by the parties, then this Agreement may be terminated immediately upon written notice by the non-breaching party.

B. Destruction of the Swimming Pool. In the event that the Swimming Pool is substantially damaged or destroyed by fire or other casualty that makes Swimming Pool usage dangerous or otherwise inadvisable, and such damage or destruction cannot be repaired within 180 days of such damage or destruction, then this Agreement shall be terminated as of the date of such damage or destruction. All payments by the parties called for in this Agreement shall be suspended and not owed during the period that the Swimming Pool is unavailable.

C. If this Agreement is terminated for any reason other than the School District's uncured breach, the City shall pay a pro-rata share of operating expenses up to the date of termination.

D. Because the Swimming Pool is owned by the School District there shall be no disposal of property upon termination of this Agreement.

17. Notice. Notices required or allowed under this Agreement shall be in writing and may be personally delivered, sent by ordinary mail or delivery service, or emailed to:

A. In the case of the City: Director of Community Development
220 Clay St.
Cedar Falls, IA 50613
stephanie.sheetz@cedarfalls.com

B. In the case of the School District: Director of Building & Grounds
Cedar Falls School District Administration Center
1002 W First St.
Cedar Falls, IA 50613

rick.gersema@cfschools.org

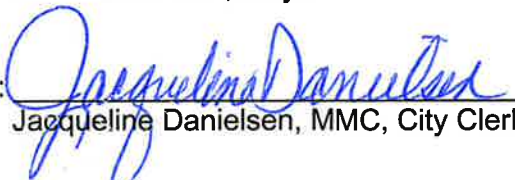
- C. A party shall promptly provide written notice to the other of any changes to contact information above.
- D. Notice shall be deemed given when personally delivered, three days after deposited in the US Mail or with a delivery service with appropriate postage or charges paid, or the date when emailed.
18. No Assignment. The rights, duties and obligations under this Agreement may not be transferred or assigned without the prior written consent of the non-transferring or non-assigning party, which consent may be withheld in the absolute discretion of the non-transferring or non-assigning party.
19. No Third-Party Beneficiary. This Agreement is solely for the benefit of the parties and no other person has any right, benefit, or interest under or because of this Agreement.
20. Entire Agreement. This Agreement constitutes the entire agreement of the parties pertaining to the subject matter and supersedes all prior agreements understandings, negotiations and discussions of the parties pertaining to the subject matter, whether oral or written.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth next to their signatures below.

City of Cedar Falls, Iowa

By: 
Robert M. Green, Mayor

Date: 21 June 23

Attest: 
Jacqueline Daniels, MMC, City Clerk

Date: 6/21/2023

Cedar Falls Community School District

By: _____

Date: _____

Its: _____

Exhibit A
Swimming Pool

Cedar Falls High School, 2701 W. 27th St.

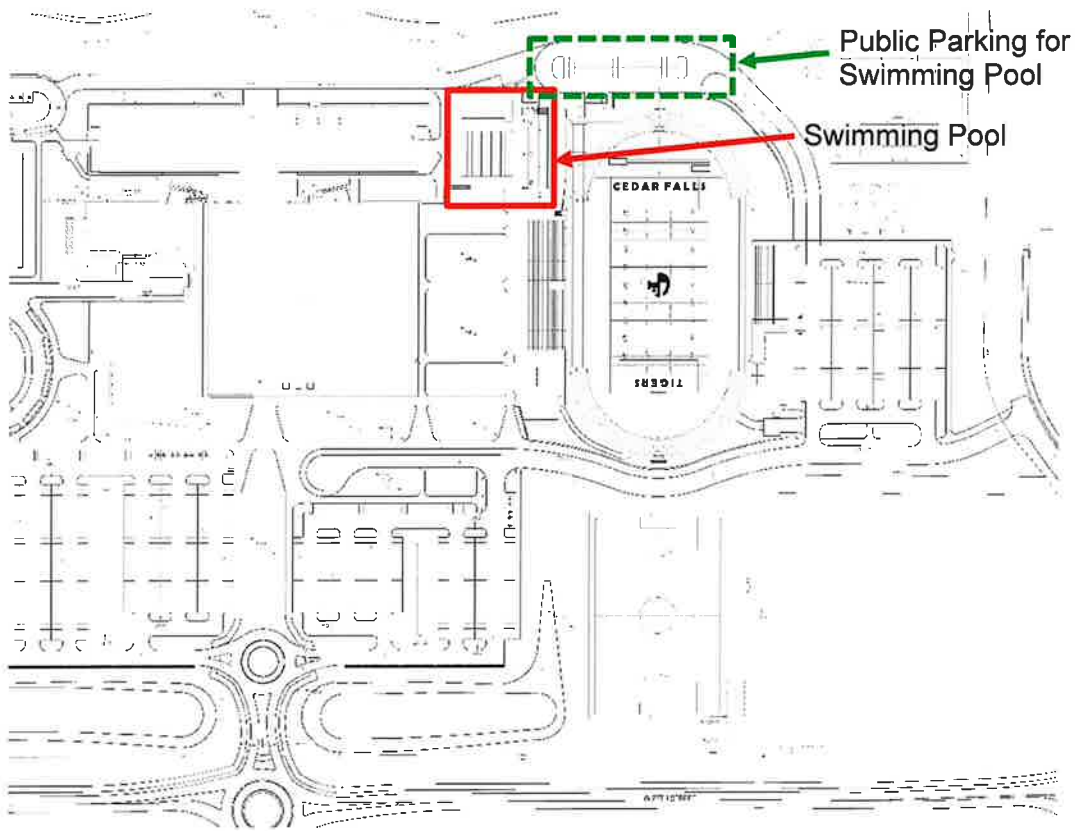


Exhibit B
Swimming Pool Facility Diagram

