

**Facility Use Agreement between Poudre School District R-1 and City of Fort Collins  
Governing Use of City Pool Facilities**

This Facility Use Agreement (“Agreement”) is entered into as of the last date signed below, by and between Poudre School District R-1, a school district organized and existing under the laws of the state of Colorado (the “District”), and the City of Fort Collins (the “City”), a Colorado municipal corporation, collectively referenced herein as the “parties.”

**Recitals**

- A. The Colorado Constitution, Article XIV, Section 18, and C.R.S. § 29-1-201, et seq., provide for and encourage political subdivisions of the State of Colorado to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with each other;
- B. C.R.S. § 29-1-203, as amended, authorizes any political subdivisions or agencies of the State of Colorado to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting entities, including the sharing of costs, imposition of taxes, or incurring of debt;
- C. The District utilizes swim lanes within existing City recreation facilities for practices and meets of its multiple high school swim teams; and
- D. Pursuant to the Intergovernmental Agreement Related to the Southeast Community Center dated February 20, 2024 (“Southeast Community Center IGA”, the District agreed to provide land and financial contributions toward the Southeast Community Center and the parties agreed to enter into a facility use agreement to govern the District’s use of City pool facilities, including the Southeast Community Center, once it is operational.

Now, therefore, in consideration of the mutual covenants and promises contained in this Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows:

- I. Purpose of Agreement. The purpose of this Agreement is intended to foster a positive partnership between the parties and will provide the terms and conditions of the District’s use of City pool facilities.
- II. Term and Termination of Agreement.
  - 1. This Agreement shall commence as of the date of mutual execution and shall continue for twenty years unless otherwise terminated as provided herein. The District may opt to renew this Agreement for another twenty-year term by providing notice to City at least six months prior to the termination of the first twenty-year term.

2. Notwithstanding any other term or provision of this Agreement, the parties' obligations hereunder are expressly subject to their respective budgeting processes and to appropriation of sufficient funds for each fiscal year the Agreement is in effect. Failure to meet the requirements of this Agreement due to non-appropriation shall not constitute a breach of this Agreement.
3. If the District fails to make any payment to the City required in Section II.2.c.iv of the Southeast Community Center IGA, the City may initiate the default/dispute resolution process in Section 4 of this Agreement.

### III. Scheduling and Use of Pools.

1. Pool Facilities. The City currently operates lap pools at the Edora Pool and Ice Center and Mulberry Pool and will operate a lap pool at the Southeast Community Center once constructed (collectively, "Pool Facilities").
2. District Use. The District uses the lap pools at the Edora Pool and Ice Center and Mulberry Pool, and will use the lap pool at the Southeast Community Center once constructed for its high school swim teams.
3. Pool Usage. The parties agree to meet yearly, on or around October 1 to determine scheduling and usage of the Pool Facilities. Determining the scheduling and usage of the Pool Facilities must be completed no later than October 31 of each year. Pool usage will be documented yearly as Exhibit A, based on the following:
  - a. For the period from the Effective Date until the opening of the lap pool at the Southeast Community Center, during each day of the Swim and Dive Season, the District shall have access for three swim teams, using five lanes for each team, for a duration of two hours for each team at the Edora Pool and Ice Center or the Mulberry Pool. The District shall have secondary priority booking at the lap pools at the Edora Pool and Ice Center and the Mulberry Pool during peak hours, subject only to the City having primary priority booking for its own programs. The District shall pay standard rates for lap pool usage during this period.
  - b. Once the lap pool at the Southeast Community Center is open for use by the public, the District shall have primary priority access for three swim teams, using five lanes for each team, for a duration of two hours for each team during each day of the Swim and Dive Season at the Southeast Community Center. Access may all be during peak time. The District may choose to use the lanes outside of peak time at the Southeast Community Center with the agreement of the City.

- c. The District may rent lap pool space at the Southeast Community Center on weekends for competitions, provided space is available and the District pays applicable rental rates. The District may rent space at the Southeast Community Center during the Swim and Dive Season for competitions and use any available time granted under this Agreement for such competition, provided that the District pay any additional applicable facility rates relating to the competition.
  - d. The City shall not charge the District for the lane usage for three teams at the Southeast Community Center, except as otherwise provided herein. The District shall pay operating costs per the Southeast Community Center IGA. By mutual agreement between the City and the District, access to the lap pool for one or more teams may be moved from the Southeast Community Center to another City Pool Facility for a specific period. The District must pay the applicable rental rate to the City at the other Pool Facility under this scenario if the District initiates the move and the City, in its discretion, determines that the District should pay the applicable rental rate.
  - e. For purposes of this Agreement, “Swim and Dive Season” means non-holiday weekdays of the winter and spring Colorado High School Activities Association (or its successor) swim and dive seasons.
- IV. Default; Dispute Resolution. If either party defaults in its obligations under the terms of this Agreement, the non-defaulting party may give the defaulting party written notice specifying the nature of the default. If the defaulting party has not cured the default within thirty days, or for default reasonably requiring more than thirty days to effect a cure, has not commenced a cure within thirty days and pursued it with diligence, the non-defaulting party may terminate this Agreement and to pursue any available legal or equitable remedies, including but not limited to injunctive relief or specific performance, provided that, if there is any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination, or invalidity thereof, the parties agree to attempt to resolve the dispute informally before terminating the Agreement or pursuing legal or equitable remedies. Accordingly, the parties will first elevate the disputed issues to senior administration, and if the matters are not resolved, the parties may then engage in mediation or other non-binding dispute resolution methods. In any dispute between the parties, each party will bear its own attorney’s fees and costs. Notwithstanding this section IV, the City agrees to not terminate the Agreement until the conclusion of any current Swim and Dive Season.
- V. Colorado Open Records Act. Information and materials submitted under this Agreement may be considered public records subject to disclosure under the

Colorado Open Records Act, (C.R.S. §§ 24-72-200.1 to -205.5) ("CORA"). Information and materials that either party believes are confidential and not subject to disclosure under CORA must be submitted separately with a citation to the section of CORA and any other relevant law under which the party believes they are confidential. The custodian of the records shall determine whether information and materials so identified will be withheld as confidential, but will inform the other party in advance of disclosure to give it an opportunity to take legal action to protect its interests vis-à-vis the party making the CORA request.

- VI. Collaboration and Coordination Meetings. Representatives from each party will meet no less than annually to discuss issues, concerns, coordination of events, schedules, maintenance, repair, budgeting, long term facility planning, and partnership evaluation. Additional meetings may be held on as needed as determined by both parties.
- VII. Insurance. The District shall maintain comprehensive general liability insurance naming the City as an additional insured and providing coverage with a combined bodily injury, death, and property damage limit of Three Million Dollars (\$3,000,000) or more per occurrence. The District shall upon request provide the City with a certificate of insurance evidencing the coverages required by this Section, which certificate shall provide that the coverage referred to therein shall not be modified or cancelled without at least thirty days' written notice to City. In the event that the District does not maintain such insurance, the City may procure such insurance on behalf of the District and the District shall promptly pay the City for the City's costs of such procurement.
- VIII. Liability. Only to the extent permitted by applicable law, each party will be responsible for its own negligent acts or omissions and that of its officers, employees, agents and contractors. Any liability of the City or District, or their officers and employees is subject to all the defenses, immunities, and limitations of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended (the "CGIA"), and to any other defenses, immunities, and limitations to liability available under the law. It is expressly understood and agreed that nothing contained in this Agreement shall be construed as an express or implied waiver by the either party of its governmental and sovereign immunities, as an express or implied acceptance by either party of liabilities arising as a result of actions which lie in tort or could lie in tort in excess of the liabilities allowable under the CGIA, as a pledge of the full faith and credit of the State of Colorado, or as the assumption by any of the parties of a debt, contract or liability or each other in violation of Article XI, Section 1 of the Constitution of Colorado.
- IX. Notices and Communications. All notices and communications required or permitted under this Agreement shall be in writing and shall be: (a) sent via certified mail, return receipt requested and postage prepaid, to the address of the other party

set forth below; or (b) sent via e-mail to the other party via the e-mail address set forth below.

**If to the City:**

Recreation Department  
Attn: Deputy Director, Community Services  
PO Box 580  
Fort Collins, CO 80522

With a copy to:

Fort Collins City Attorney  
Attn: Recreation Attorney  
PO Box 580  
Fort Collins, CO 80522  
Email: CaoAdmin@fortcollins.gov

**If to the School District:**

Contracts  
[contracts@psdschools.org](mailto:contracts@psdschools.org)  
2407 Laporte Avenue  
Fort Collins, CO 80521

**With a copy to:**

General Counsel  
[aaspen@psdschools.org](mailto:aaspen@psdschools.org)  
2407 Laporte Avenue  
Fort Collins, CO 80521

X. General Provisions.

1. No Assignment. Neither party shall assign this Agreement or any of its rights, interests or obligations under this Agreement without the prior written consent of the other party, which consent may be withheld for any reason or no reason.
2. No Waiver. The parties agree that no assent or waiver, express or implied, to any breach of any one or more of the covenants of this Agreement shall be construed as or deemed to be an assent to or a waiver of any subsequent breach.
3. Press Contacts/News Releases. Neither party shall initiate any press, media, or social media contact nor respond to press, media or social media requests regarding this Agreement and/or any related matters without the

prior written approval of the other party's Chief Information Officer or designee.

4. Amendment or Modification. No amendment or modification of this Agreement shall be valid unless set forth in writing and executed by the District Superintendent and the City Manager.
5. Survival of Certain Agreement Terms. Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Agreement and the exhibits and/or attachments hereto which may require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable by the District or the City, as applicable, as provided herein in the event of such failure to perform or to comply.
6. Governing Law and Venue. All issues regarding the formation, performance and/or legal enforcement of the Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for the resolution of any disputes arising out of or relating to the Agreement shall be in Larimer County, Colorado.
7. No Third-Party Beneficiary. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the District and the City. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any third person other than the District or the City. It is the express intent of the parties that any third person receiving services or benefits pursuant to this Agreement shall be deemed an incidental beneficiary only.
8. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors and permitted assigns.
9. Headings. The headings used in this Agreement are for convenience only and shall have no effect upon the construction or interpretation of this Agreement.
10. Conflict of Terms. In the event of any conflict of terms found between this Agreement, any incorporated exhibits, any other terms and conditions, end user license agreements or privacy policies, the terms of this Agreement shall prevail.

11. Entire Agreement. This Agreement constitutes the entire Agreement of the parties regarding the subject matter addressed herein and supersedes all prior Agreements, whether oral or written, pertaining to said subject matter.
12. Signatures. This Agreement may be executed and delivered via portable document format (pdf), and the pdf signature of any party shall be considered valid, binding, effective and an original for all purposes.
13. Warranty of Authority. The individuals signing below represent and warrant that they have the authority to execute this Agreement on behalf of their respective organizations and bind their respective organizations to the terms of this Agreement.
14. Force Majeure. No party will be deemed in violation of this Agreement if prevented from performing any of its respective obligations by reason of strikes, boycotts, labor disputes, embargoes, shortage of energy or materials, acts of God, acts of public enemies, acts of superior governmental authorities, weather conditions, rebellions, riots, sabotage or any other circumstance for which it is not responsible or that are not within its control.

In Witness Whereof, the parties have executed this Agreement as of the date of the most recent signatory.

**The City of Fort Collins, Colorado**

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

Approved as to Form:

\_\_\_\_\_

Asst. City Attorney

**Poudre School District R-1**

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

**Exhibit A**

Pool Facility usage for the \_\_\_\_\_ school year.

Mulberry Pool

Dates:

Times:

Lanes:

Edora Pool and Ice Center

Dates:

Times:

Lanes:

Southeast Community Center

Dates:

Times:

Lanes: