

RESOLUTION NO. 15-16
OF EDMONDS SCHOOL DISTRICT No. 15
SNOHOMISH COUNTY, WASHINGTON

AUTHORIZE INTERLOCAL COOPERATION AGREEMENT
WITH CITY OF LYNNWOOD FOR USE OF CITY AQUATIC FACILITIES

WHEREAS, RCW 39.34, the Interlocal Cooperation Act, provides for interlocal cooperation between governmental agencies, and;

WHEREAS, the District desires to use the City aquatic facilities for conducting interscholastic swimming and aquatic sports programs, and:

WHEREAS, the City agrees to the District's use of its aquatic facilities to maximize public benefit by implementing an agreement for the use of City-owned facilities; and

WHEREAS, both the City and District will benefit from using an agreement which defines and protects the interests of both parties;

NOW THEREFORE, BE IT RESOLVED by the Board of Directors of the Edmonds School District #15, Snohomish County, as follows:

1. That an interlocal cooperation agreement be formed between Edmonds School District #15 and the City of Lynnwood for the use of aquatic facilities for interscholastic swimming and aquatic sports programs; and
2. That the Superintendent or designee of Edmonds School District #15, Snohomish County, Washington, is hereby designated as representative to the interlocal cooperation agreement, and the Superintendent or designee is further authorized to execute and implement the requisite agreement or agreements to accomplish this purpose.

ADOPTED by the Board of Directors of Edmonds School District #15, Snohomish County, Washington, at a regular meeting thereof this 24th day of March, 2015.

EDMONDS SCHOOL DISTRICT NO. 15
Snohomish County, Washington

Diana White, President

Kory DeMun, Vice President

April Nowak, Legislative Representative

ATTEST:

Gary Noble, Director

Nick Brossoit, Ed.D
Secretary to the Board of Directors

Ann McMurray, Director

1 INTERLOCAL COOPERATION AGREEMENT
2 BETWEEN CITY OF LYNNWOOD AND EDMONDS SCHOOL DISTRICT NO. 15
3 FOR USE OF CITY AND DISTRICT
4 RECREATIONAL FACILITIES AND SERVICES
5
6

7 This Interlocal Cooperation Agreement is entered into on this 7th day of April, 2015
8 by and between the Edmonds School District #15 ("District") and the City of Lynnwood ("City"), both
9 municipal corporations under the laws of the State of Washington (collectively, the "Parties").
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11 WHEREAS, the Interlocal Cooperation Act, as amended and codified in Chapter 39.34 RCW,
12 provides for interlocal cooperation between government agencies; and
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14 WHEREAS, the Parties are each Washington municipal corporations with authority under
15 state law to provide recreational services and to own, operate, construct, maintain, and repair
16 recreational facilities; and
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18 WHEREAS, the City owns and operates an aquatic facility, including but not limited to,
19 indoor swimming pools, locker rooms, showers, and related equipment and facilities, located at 18900
20 44th Avenue West, Lynnwood, Washington ("Aquatic Center") and provides recreational aquatic and
21 related services; and
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23 WHEREAS, the District owns and operates recreational facilities in connection with its
24 school facilities, including but not limited to an indoor gymnasium and related facilities at Cedar
25 Valley Community School, located at 19200 56th Avenue West, Lynnwood Washington ("Cedar
26 Valley Elementary Gymnasium"), an indoor gymnasium and related facilities at Lynndale Elementary
27 School, located at 7200 191st Place SW, Lynnwood Washington ("Lynndale Elementary
28 Gymnasium"), and an indoor gymnasium and related facilities at Meadowdale Middle School, located
29 at 6500 168th Street SW, Lynnwood Washington ("Meadowdale Middle School Gymnasium"); and
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31 WHEREAS, the City desires to use District facilities and the District desires to use the City
32 facilities, and the City and the District agree to allow limited mutual use of City and District facilities
33 identified in this Agreement; and
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35 WHEREAS, other Interlocal Cooperation Agreements are in force regarding the City's use of
36 the District's Cedar Valley Elementary Gymnasium and the District's use of the City's Aquatic Center,
37 and the Parties desire that these agreements continue in effect with respect to use of these facilities;
38 and
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40 WHEREAS, this Agreement maximizes public benefit by implementing an agreement for the
41 use of City and District facilities; and
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43 WHEREAS, both the City and the District contemplate that the values associated with mutual
44 use of each Parties' facilities and services will be approximately equal; and
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46 WHEREAS, both the City and the District will benefit from using an Agreement which
47 defines and protects the interests of both Parties; and
48

49 WHEREAS, the City and the District mutually desire to have an overarching agreement for

50 the use of facilities and services, one to the other under the terms set forth herein.

51
52 **NOW THEREFORE, IN CONSIDERATION** of the benefits to be derived and the terms
53 and conditions set forth herein the City and the District do hereby agree as follows:
54

55 **1. City's Aquatic Center Facilities.** The City agrees to make its Aquatic Center
56 available to the District under the terms and conditions of the Interlocal Cooperation Agreement for
57 Use of City Aquatic Facilities, copy attached as **Exhibit A** and incorporated herein by this reference
58 ("Aquatic Facilities Agreement"). The Aquatic Center facilities available to the District include, but
59 are not limited to, the swimming pool, locker rooms, showers and related equipment owned by the
60 City and located at 18900 44th Ave. W.
61

62 **2. District's Cedar Valley Elementary Gymnasium.** The District agrees to make its
63 Cedar Valley Elementary Gymnasium, located at 19200 56th Ave. W., available for City use under the
64 terms and conditions of the Interlocal Agreement between City of Lynnwood and Edmonds School
65 District No. 15, Operations, Maintenance and Use Agreement for the Cedar Valley Community School
66 in effect, copy attached as **Exhibit B** and incorporated herein by this reference ("Cedar Valley
67 Gymnasium Agreement").
68

69 **3. District's Lynndale Elementary Gymnasium.** The District agrees to make its
70 Lynndale Elementary Gymnasium, located at 7200 191st Pl. SW, available to the City for the purpose
71 of summer recreational use for providing a backup facility during weather events prohibiting the use of
72 Lynndale Park from the end of the District's school year to one week before the beginning of the next
73 school year. The exact number of days will vary depending on end and start date for the District's
74 school year.
75

76 **4. District's Meadowdale Middle School Gymnasium.** The District agrees to make its
77 Meadowdale Middle School Gymnasium, located at 6500 168th St. SW, available for City use on
78 weekends (from 9:00am to 10:00pm on Saturdays and Sundays) from November 1st to March 31st.
79

80 **5. Term and Termination.**

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82 **5.1** The term of this Agreement shall be from April 7, 2015 through August 31,
83 2019 (the "Initial Term") unless terminated earlier or amended in accordance with this Agreement;
84 provided, that nothing in this Agreement shall affect the term of the Cedar Valley Gymnasium
85 Agreement.
86

87 **5.2** At the conclusion of the Initial Term, this Agreement shall automatically be
88 renewed for one additional five-year term, from September 1, 2019 through August 31, 2024, unless
89 either Party provides the other Party with notice of non-renewal at least one hundred twenty (120)
90 calendar days prior to the conclusion of the Initial Term.
91

92 **5.3** This Agreement may be terminated by the City or by the District, with or
93 without cause, upon written notice to the other Party at least one hundred twenty (120) calendar days
94 in advance of the intended termination date; provided, that the Cedar Valley Gymnasium Agreement
95 and the Aquatic Facilities Agreement may only be terminated in accordance with the provisions of
96 those Agreements.
97

98 **6. Schedules for Use of District Facilities.** The specific schedules for use of District
99 facilities shall be determined in advance either in accordance with the terms of the Cedar Valley
100 Gymnasium Agreement for the Cedar Valley Elementary Gymnasium, or at time designated so as to
101 not interfere with District requirements or scheduled maintenance for the Lynndale Elementary
102 Gymnasium and the Meadowdale Middle School Gymnasium.
103

104 **7. Adjustments to Hours and Use of any Facility.** Adjustments to the hours and use of
105 any City or District facility may be made only upon reasonable notice to/from the Aquatics Center
106 Supervisor to/from the school Principal affected and the Director of Facilities Operations, and only
107 upon the Agreement of each Party to the adjusted hours and use.
108

109 **8. Annual Cost Reconciliation.** The City's Parks Department and the District's
110 Facilities Operations Department shall exchange a cost reconciliation report one to the other by
111 December 31st of each year. Each report shall state the cost of labor, utilities, supplies, replacement
112 equipment and damages attributable to the other Party's use of recreational facilities subject to this
113 Agreement for that calendar year. The use of facilities already under an Interlocal Cooperation
114 Agreement shall be valued on the formula(s) and other provisions contained in those Agreements.
115 District facilities not currently under an Interlocal Cooperation Agreement shall be valued under the
116 terms of District Policy 9200 and Procedure 9200R-1 'Community Use of District Facilities,' copies
117 attached as **Exhibit C** and incorporated herein by this reference. In the event that either Party
118 determines that these annual reconciliation reports do not demonstrate that the Parties use of the
119 facilities subject to this Agreement are not of similar or acceptable value, the City's and the District's
120 Designated Representatives shall meet to discuss opportunities to either increase or decrease one or the
121 other's use of City or District facilities, or for one Party to pay the other for the disparate amount under
122 the terms and conditions set forth herein.
123

124 **9. Indemnification and Hold Harmless.**

125 **9.1 District's Indemnity and Hold Harmless.** The District shall protect, release,
126 defend and hold harmless the City, and its officers, officials, employees, agents, contractors,
127 consultants and volunteers, from any and all claims, demands, suits, penalties, losses, injuries,
128 damages, judgments, attorneys' fees and costs of any kind whatsoever, arising out of or in any way
129 resulting from any act or omission of the District, or its officers, officials, employees, agents,
130 contractors, consultants and volunteers, in the District's use of the City's facilities or performance of
131 any obligation under this Agreement, and including use of any third party authorized by the District to
132 use the City's facilities.
133

134 The District's obligations under this section shall include, but are not limited to: (1) the duty
135 to promptly accept tender of defense and provide defense to the City at the District's expense; (2)
136 indemnification for such claims arising from the sole negligence of the District. The District's
137 obligations under this section shall not extend to claims arising from the sole negligence of the City;
138 and (3) the duty to indemnify and defend the City from any claim, demand, or cause of action brought
139 by or on behalf of any of the District's employees or agents. The foregoing duty is specifically and
140 expressly intended to constitute a waiver of the District's immunity under Washington's Industrial
141 Insurance Act, Title 51 RCW, as respects the City only, and only to the extent necessary to provide the
142 City with a full and complete indemnity and defense of claims made by the District's employees.

143 **9.2 City's Indemnity and Hold Harmless.** The City shall protect, release, defend
144 and hold harmless the District, and its officers, officials, employees, agents, contractors, consultants
145 and volunteers, from any and all claims, demands, suits, penalties, losses, injuries, damages,
146 judgments, attorneys' fees and costs of any kind whatsoever, arising out of or in any way resulting
147 from any act or omission of the City, or its officers, officials, employees, agents, contractors,
148 consultants and volunteers, in the City's use of the District's facilities or performance of any obligation
149 under this Agreement, and including use of any third party authorized by the City to use the District's
150 facilities.

151 The City's obligations under this section shall include, but are not limited to: (1) the
152 duty to promptly accept tender of defense and provide defense to the District at the City's expense; (2)
153 indemnification for such claims arising from the sole negligence of the City. The City's obligations
154 under this section shall not extend to claims arising from the sole negligence of the District; and (3) the
155 duty to indemnify and defend the District from any claim, demand, or cause of action brought by or on
156 behalf of any of the City's employees or agents. The foregoing duty is specifically and expressly
157 intended to constitute a waiver of the City's immunity under Washington's Industrial Insurance Act,
158 Title 51 RCW, as respects the District only, and only to the extent necessary to provide the District
159 with a full and complete indemnity and defense of claims made by the City's employees.
160

161 **10. No Assignment without Authorization.** Neither Party shall assign or sublet its rights
162 or responsibilities under this Agreement without the written authorization of the other Party. Written
163 authorization shall not be unreasonably withheld.
164

165 **11. Notice.** Each notice or communication which may be or is required to be given under
166 this Agreement shall be in writing and shall be deemed to have been properly given when delivered
167 personally during the normal business hours to the Party to whom such communication is directed or
168 three working (3) days after being sent by regular mail, to the following address:
169

City of Lynnwood
c/o Recreation Superintendent
18900 44th Ave. W.
Lynnwood, WA 98036

Edmonds School District #15
c/o Director, Facilities Operations
20420 68th Ave. W
Lynnwood, WA 98036

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171 **12. Dispute Resolution.** If either Party claims that the other Party has breached any term
172 of this Agreement, the following procedures shall be followed if and when informal communications,
173 such as telephone conversations, emails or face to face meetings fail to satisfy the claiming Party, or
174 one of the Parties elects to trigger the dispute resolution process at any time, in the event of disputes or
175 disagreements concerning programming or uses:
176

177 A. The claiming Party's Designated Representative shall provide a written notice to the other
178 Party's representative of the alleged breach. The notice shall identify the act or omission at issue and
179 the specific term(s) of the Agreement which the complaining Party alleges was violated.
180

181 B. The responding Party's Designated Representative shall respond to the notice in writing
182 within fifteen (15) working days. The response shall state the responding Party's position as well as
183 what, if any, corrective action the responding Party agrees to take.
184

185 C. The complaining Party shall reply in writing, indicating either satisfaction or dissatisfaction

186 with the response. If satisfied, any corrective action shall be taken within fourteen (14) working days
187 of receipt of the responding Party's reply unless otherwise mutually agreed upon. If dissatisfied, the
188 complaining Party shall call an in-person meeting to include the respective department directors. The
189 meeting shall occur within a reasonable period of time and shall be attended by the designated
190 representatives of each Party, and such others as they individually invite.
191

192 D. If the complaining Party remains dissatisfied with the results of the meeting, it shall then
193 refer the matter to the District's Superintendent and City's Mayor, or their designees, for resolution. If
194 the issue is not resolved at this level within thirty (30) days, then either Party may require in writing
195 that the matter shall be reviewed in a non-binding, structured mediation process developed on a
196 cooperative basis by the Parties and the Parties shall consider in good faith any recommendations or
197 settlements arising from such process. All of the steps preceding shall be a prerequisite to either
198 Party suing under this Agreement for breach, specific performance, or any other relief related to this
199 Agreement.
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202 **13. Severability.** If any term of this Agreement is held invalid or unenforceable, the
203 remainder of the Agreement will not be affected but continue in full force.
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205 **14. Designated Representative.** Each Party shall designate a person who shall be
206 responsible for handling the administrative needs regarding the use of any facilities subject to this
207 Agreement and the implementation of this Agreement. The City's Designated Representative shall be
208 the Recreation Superintendent. The District's Designated Representative is the Director, Facilities
209 Operations.
210

211 **15. Real and Personal Property.** The City owns the real property on which the Aquatic
212 Facilities are located, and the District owns the real property on which the Cedar Valley Gymnasium,
213 Lynndale Elementary Gymnasium, and Meadowdale Middle School Gymnasium are located. This
214 Agreement does not contemplate the transfer of ownership of any of the real property, and does not
215 limit the District's ability to comply with its statutory obligations regarding use and disposition of
216 school district property under Chapter 28A.335 RCW. By entering into this Agreement, the Parties do
217 not intend to jointly acquire or hold any real or personal property; provided, the Parties may make
218 available to each other, as a matter of convenience, athletic equipment and other personal property
219 normal and incidental to use of the recreational facilities that are the subject of this Agreement. If any
220 such personal property items are shared, the Parties shall maintain records indicating the nature and
221 quantity of the items shared. Ownership of any such personal property shall remain with the Party who
222 purchased the property.
223

224 **16. Non-Waiver.** The failure by either Party to insist on strict performance of or
225 compliance with any term or condition of this Agreement by the other Party shall not constitute or be
226 construed as a waiver or relinquishment of the Party's right thereafter to insist on strict performance of
227 or compliance with that term or condition, or any other term or condition, of this Agreement, and the
228 same shall continue in full force and effect.

229 **17. Records.** Each Party shall maintain records necessary to carry out the purposes of this
230 Agreement in accordance with generally accepted accounting principles. Such records shall be
231 available during normal working hours for review by the other Party, its accounting representatives,
232 and the State Auditor.

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18. No Conflict; Controlling Provisions. The terms and conditions set forth in this Agreement are not intended to conflict with the terms and conditions of the Aquatic Facilities Agreement or the Cedar Valley Gymnasium Agreement. Unless stated otherwise in this Agreement, in the event of an irreconcilable conflict between a provision in either of those Agreements and this Agreement, the provisions of the Aquatic Facilities Agreement shall control with respect to the City's Aquatic Center Facilities, the provisions of the Cedar Valley Gymnasium Agreement shall control with respect to the Cedar Valley Gymnasium, and the provisions of this Agreement shall control with respect all other facilities that are the subject of this Agreement.

19. Amendment. This Agreement may only be amended or modified by a written instrument executed by an authorized representative of each Party.

20. No Third Party Rights. Nothing in this Agreement shall be interpreted to create any right or liability with respect to any person or entity not a signatory to this Agreement.

21. No Agency Relationship. The Parties to this Agreement are independent entities. This Agreement does not and shall not be interpreted or construed to create any agency relationship between the Parties.

22. Interpretation/Venue. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action arising out of or related to this Agreement shall be in the Snohomish County Superior Court.

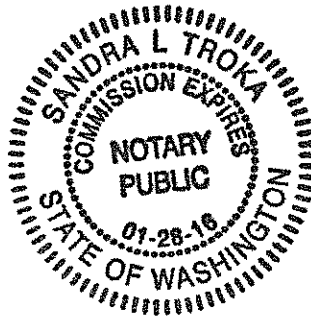
For the City of Lynnwood

For Edmonds School District #15

Nicola Smith,
Mayor

Nick Brossoit,
Superintendent

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STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that on this 24th day of March, 2015, Nick Brossio signed this instrument, on oath stated that they were authorized to execute the instrument, and acknowledged it, as the Superintendent, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Print Name: Sandra L. Troka
Notary Public in and for the State of Washington, residing at Edmonds
My commission expires: 1-28-16

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that on this 7 day of April, 2015, Nicola Smith signed this instrument, on oath stated that they were authorized to execute the instrument, and acknowledged it, as the Mayor, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Print Name: Susan M. Burns
Notary Public in and for the State of Washington,
residing at Lynnwood, WA
My commission expires: 4-29-17

