

*AGREEMENT BETWEEN
Independent School District 709, St. Louis County, MN,
and the Lake Superior Swim Club
2017-2022*

THIS AGREEMENT is entered into by and between Independent School District 709 (“ISD 709”), 215 North First Avenue East, Duluth, MN 55802, St. Louis County, Minnesota, and the Lake Superior Swim Club (“LSSC”), a non-profit corporation licensed and qualified to do business in the State of State of Minnesota, 739 Mellwood Avenue Duluth, MN 55804.

Collaboration between ISD 709 and LSSC
WITNESSETH

WHEREAS, ISD 709 owns and operates the indoor swimming pools at their middle school facilities ("pools") for the benefit of the students and citizens of the Duluth school district, and

WHEREAS, LSSC is a non-profit organization formed in 2011 to conduct swim programming for all ages and skill levels in the community, and

WHEREAS, ISD 709 and LSSC desire to work cooperatively to provide basic, competitive and advanced swimming opportunities for all ages in the community, and

WHEREAS, LSSC provides the community with a source of lifeguards and swimming instructors, and

WHEREAS, ISD 709 is in a position to provide employment opportunities for district and LSSC youth interested in using and enhancing their swimming skills, and

WHEREAS, LSSC has and will continue to advocate for swimming pool budgets and capital improvement projects, and

WHEREAS, LSSC swimmers serve as Duluth ambassadors to other communities.

NOW, THEREFORE, the parties agree as follows:

Section 1. Term and Effective Date.

This agreement shall be effective upon signature by both parties and shall be in effect until June 30, 2022, unless sooner terminated as provided in this contract.

Section 2. Staff Qualifications.

LSSC shall ensure that any staff assigned by LSSC to assist with the swim program shall have the following minimum qualifications:

- a. Current certification of safety training for swim coaches issued by the Red Cross or similar organization;
- b. Certificates in first aid and cardiopulmonary resuscitation, issued by the Red Cross or similar organization; and
- c. Completed criminal record background check, with documentation of such check maintained for all LSSC staff.

Section 3. Supervision at Pool.

LSSC pool activities will be subject to appropriate pool supervision. LSSC members including coaches, board members and volunteers shall comply with instructions issued by ISD 709 officials. LSSC activities must be under the direction of a LSSC coach, assistant coach or other LSSC designee at all times.

LSSC will provide pool supervision for any third party use of the pools.

Section 4. Pool Use Schedules.

ISD 709 shall make the Ordean and Lincoln Park Middle School pools (“Pool” or “Pools”) available for use for pool activities by LSSC for LSSC activities according to the schedule established according to the process described below.

a. Meeting/Schedules.

- (1) LSSC and ISD 709 will each designate 2 people to form a Pool Schedule Committee with the Head Coach/Executive Director of LSSC.
- (2) LSSC will provide ISD 709, and the Pool Schedule Committee general meet information as early as possible in May.
- (3) By June 1 of every year, LSSC will provide ISD 709 and the Pool Schedule Committee local meet information and yearly schedule.
- (4) At an annual meeting to be held before July 15 of each year, the Head Coach/Executive Director of LSSC will finalize the schedule for the following year, including but not limited to swim meets, swim practices, Community Education pool activities, school holidays, school inservice days, and pool closures.
- (5) ISD 709 will inform LSSC of planned pool closures.
- (6) LSSC will inform ISD 709 of any changes to the pre-approved schedule at least two weeks in advance.
- (7) ISD 709 shall attempt to accommodate all reasonable requests on the schedule. Revisions to the schedule may be made at the discretion of the Head Coach/Executive Director of LSSC and shall be agreed upon in writing by both parties.
- (8) LSSC is the coordinator of the Pools with maximum utilization being considered.
- (9) In establishing the schedule for pool use outside of school hours, ISD 709 and LSSC agree that priority will be given to high school and middle school swim team practices and competitions, LSSC swim team practices and competitions, Community Education pool activities (classes, open swim, and lap swim), and swim lessons (conducted by LSSC and/or other programs). Further, the parties agree that efforts will be made to schedule opportunities for open swim, and swim lessons at times convenient to families.

b. Pool Time and Changes.

LSSC agrees to notify ISD 709 of any changes relating to scheduled uses of the pools in writing or by email at least two weeks in advance.

ISD 709 will notify LSSC at least two weeks in advance of changes to the schedule made at ISD 709's request, excluding changes resulting from unforeseen mechanical problems or other unexpected events.

Section 5. Pool Use Rates.

In consideration of reserved use of the pool, LSSC agrees to pay ISD 709 according to the following fees:

Annual Rates:

LSSC will pay an annual fee ~~per the schedule below~~ for use of the facilities.

September 1, 2017 – August 30, 2018: \$6,000

Each subsequent year (September 1 – August 30): Previous year's rental amount + 3% (or CPI, whichever is greater)

The annual rental fee will be offset with the cost of employing lifeguards who will be assigned to staff the pools for Community Education or other activities unrelated to LSSC uses. LSSC will submit monthly reports to ISD 709 listing lifeguard staffing assignments, and staffing costs for non-LSSC uses.

An invoice for the annual fee, incorporating any applicable offset, will be prepared by ISD 709 for the prior year on/about September 15th of every year, with payment due within 30 days.

In addition, fifty percent of any operating profits in excess of the annual value of the rental fees will be paid to ISD 709 prior to September 1 of each year.

LSSC will forward copies of its 990 Tax Return, financials, and demographics to ISD 709 every August.

Swim Meet Facility Rental Fee:

ISD 709 and LSSC agree that LSSC or 3rd party usage hours that fall outside of the normal Maintenance Department staffing hours will be subject to a separate mutually agreed upon charge to cover necessary wages, benefits and overtime. Any such cost relating to LSSC activities will be invoiced to LSSC (in addition to the annual fee as described above) on a monthly basis, with payment due within 30 days.

Specific locations and details of use shall be discussed each year at the annual meeting.

Section 6. Storage.

Storage of LSSC equipment shall be pursuant to Attachment 1, attached hereto.

Section 7. Improvements and New Equipment.

ISD 709 must approve any LSSC plans for modifications that may impact the physical building, utilities systems, pool equipment or operations prior to purchasing new equipment or committing to that action.

Section 8. Equipment.

LSSC and ISD 709 have agreed to jointly manage equipment listed in Attachment 1 as joint use items. All other equipment purchases are the responsibility of each group.

Section 9. Relationship between LSSC and ISD 709.

LSSC is not a partner, joint venturer, employee or agent of ISD 709 and shall not, and is not authorized to, enter into or make any contracts, agreements, or enter into any other understanding with any other person, corporation, partnership, joint venturer, or other entity, in the name of or for the benefit of ISD 709. LSSC, its agents, employees, and members are not entitled to any insurance coverage, whether workers' compensation or otherwise, or any other benefits accorded to ISD 709's employees.

Section 10. Termination.

This agreement terminates automatically on ~~July 31, 2025~~ June 30, 2022, but may be sooner terminated by mutual agreement of the parties or by either party at will upon 3 months written notice to the other party. In the event that this contract is terminated, LSSC shall be entitled to retain or receive only the monies paid or owed by the ISD 709 for services actually rendered prior to the effective date of the termination. LSSC shall refund to the ISD 709 all monies paid for services that were to be rendered after the effective date of the termination.

Section 11. Hold Harmless and Indemnify.

Neither party shall be liable to the other party for any claims, liabilities, or damages of any kind, or for injury or damage to persons or property caused by or resulting from the use, maintenance, supervision, or other action or omission related to the pool by the other party, its employees, agents, contractors, representatives, or invitees. The party whose employees, agents, contractors, representatives, or invitees are damaged or who are alleged to have caused the damage shall indemnify and defend the other party from any claims, actions or lawsuits in accordance with this section.

Section 12. Insurance.

LSSC agrees to keep and maintain in full force and effect at LSSC's own expense for all participants in LSSC activities during the entire period of this agreement, insurance for LSSC activities pursuant to a policy with USA Swimming, or its equivalent. This policy is provided to members of USA Swimming and provides secondary accident medical insurance and liability insurance. The policy shall cover the risks for the amounts satisfactory to the risk manager.

Such insurance shall name the ISD 709 as an additional insured and shall require that the insurance company give not less than thirty days prior written notice to ISD 709's risk management officer prior to any cancellation, non-renewal, or reduction in the amount or coverage.

Section 13. No Third Party Beneficiaries.

Nothing in this agreement shall be construed to give any person other than ISD 709 and LSSC any legal or equitable right, remedy or claim under this agreement, but it shall be held to be for the sole and exclusive benefit of ISD 709 and LSSC.

Section 14. Notice.

Any notice, demand, request, consent, approval, or other communication that either party desires or is required under this agreement to give to the other party or any other person shall be in writing and shall be mailed or served personally to the person and address below. Parties shall promptly notify each other in writing of any change in this information.

ISD 709: Douglas A. Hasler, CFO
ISD 709 – Duluth Public Schools
215 North First Avenue East
Duluth, MN 55802
218.336.8704

LSSC: Howard Leathers
Head Coach / Executive Director
2801 Branch Street
Duluth, MN 55812
218.310.8124

Anthony Yung
President – Board of Directors
Lake Superior Swim Club
739 Mellwood Avenue
Duluth, MN 55804
218.310.2341

Section 15. Non-Discrimination.

The LSSC will not discriminate against any program participant on the basis of membership in a class protected by municipal, state, or federal law, such as age, race, gender, religion, nationality, parenthood, or disability.

Section 16. Workers' Compensation Coverage.

LSSC, will provide ISD 709 with appropriate proof, furnished by the insurance carrier, of current coverage for workers' compensation with an insurance company or association authorized to transact such business in the State of Minnesota, or an approved current certification of self-insurance. LSSC further acknowledges and agrees that in the event it fails to maintain proper Workers' Compensation coverage, ISD 709, at its option, may terminate this agreement for cause without liability.

Section 17. Miscellaneous.

- a. Nonwaiver. Failing or delaying to object to a breach of any part of this agreement is not a waiver of the right to object to that breach, nor is it a waiver of the right to object to a subsequent breach of the same or any other part of this agreement.
- b. Law Applicable. The laws of the State of Minnesota shall govern this agreement.
- c. Paragraph Headings. The heading of the several sections and subsections contained herein are for convenience only and do not define, limit or construe the contents of such sections and subsections.
- d. Successors and Assigns. Except as otherwise provided, the agreements and obligations in this agreement shall bind the parties and their respective personal representatives, heirs, successors and assigns.
- e. Compliance with Laws and Regulations. LSSC shall, at LSSC's sole cost and expense, comply with all applicable requirements of local, state and federal laws, ordinances, or regulations now in force, or which may be in force, during the performance of this agreement.
- f. Time of the Essence. Time is of the essence of each term, condition, covenant and provision of this agreement.
- g. Entire Agreement. This agreement and any attached schedules, appendices or exhibits are the complete agreement between the parties, and there are no other promises, agreements, conditions or understanding, either oral or written, between them.
- h. Severability. If any provision of this agreement is found to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

ISD 709 and LSSC agree and sign below. This contract is not effective until signed by both parties.

ISD 709:

LSSC:

Date: _____

Date: _____

By: _____

By: _____

Authorized Representative
David Kirby
Board Chair
ISD 709 Duluth Public Schools

Authorized Representative
Anthony Yung
President
Lake Superior Swim Club

ATTACHMENT 1

LSSC and shared items approved for storage at Middle School pools.

LSSC shall use designated space in pool offices for storage.

Items listed below are designated as joint use items required for swim meets:

All items to be stored in Storage Room "s" unless specified otherwise by an asterisk *.

- Timing system components:
 - Touchpads and storage rack* - In storage room
 - Self-contained timing table unit and storage cabinet
 - Printer
 - Cables and manual controls* - Inside of self-contained timing table
 - Timing control unit
 - Electronic Timing Board and Heat Readout Board(1 each)* - Mounted on wall above deck in NW corner of building
- Competitive Lane markers and storage reel* - (Stored on deck)
- Starting blocks* (6) - (Stored on deck)
- 3' 4x4 post to hold up diving board and 6' 4x4 post to remove starting blocks* (1 ea) - Stored on deck
- Cabinet space - Cache of gear available to swimmers (LSSC, Masters, Synchro)
- Meet support Equipment
 - Cabinet with meet support supplies - Starting gun, DQ paperwork
 - Folding chairs and tables for meets* - Stored outside
 - Award stand* - Stored outdoors
 - Recall starting line and support poles*
 - Stored in instructional storage room on north wall
- First Aid kit* (readily available and off the floor)
- Swim team cart - Rolling cart serves as a mailbox for swimmers
- Swimming aids* - Stored in north wall storage area or in benches if acquired
 - Pace clocks (2) - Joint use
 - Mirrors* - LSSC only - On deck next to timing table on south wall
 - Dry Erase Board* - On wall in pool area
 - Backstroke Pennants and deck poles* - Joint use - In place over pool. When taken down they are stored in the instructional storage room
- Bulletin Board* - Located in pool lobby
- Bulletin Board* - Mounted on the outside of the pool building

General Terms and Conditions

Items identified as joint use will be shared by ISD 709 and LSSC. Responsibility and financial issues associated with replacement and/or repair of joint use items will be reviewed at the annual meeting with a 50/50 sharing of expenses as the goal.

This Attachment will be reviewed at the annual scheduling and review meeting between ISD 709 and LSSC, June 1st or at some other mutually agreed upon date. LSSC will provide an annual inventory of the items stored and their location at the annual meeting.

LSSC may request storage of other items that meet the criteria developed for storage of items at the pool but are not included on this list, by submitting a request to ISD 709 designee. If approved, ISD 709's designee will designate the appropriate area for the item to be stored.

General criteria for allowable storage of LSSC items at the Middle School pools:

1. Size of items: Oversize items that are necessary to conduct a competitive swim program and have no smaller and more portable substitutes.
2. Sensitivity or delicacy of items: Items that are necessary to conduct a competitive swim program and are very sensitive or delicate and subject to damage by transport.
3. Frequency of use: Items that are necessary to conduct a competitive swim program and are in use on a daily or weekly basis.