

**KENAI CENTRAL HIGH SCHOOL
HELICOPTER TRAINING FACILITY USAGE AGREEMENT**

THIS AGREEMENT, made _____ (date) _____, is between the Kenai Peninsula Borough School District, 148 N. Binkley Street, Soldotna, Alaska 99669, hereinafter referred to as "District," the Kenai Peninsula Borough, 144 N. Binkley, Soldotna, Alaska 99669, hereinafter referred to as "Borough," and the Alaska Challenger Center for Space Science Technology, Inc., 9711 Kenai Spur Highway, Kenai Alaska 99611, hereinafter referred to as "CLCA."

WHEREAS, the Borough owns and the District operates the Kenai Central High School facility located at 9583 Kenai Spur Highway, Kenai, Alaska 99611, hereinafter referred to as "KCHS"; and

WHEREAS, on April 24, 2007 the Borough and District contracted with Survival Systems USA, Inc. to install and operate a Modular Egress Training Simulator (METS™) and Demag Hoist Model EKDR10 (Demag) at KCHS, which included the construction of modifications to the Kenai Central High School (KCHS) facility and the installation of the helicopter underwater egress training facility; and

WHEREAS, Survival Systems USA, Inc. and CLCA have since entered agreements transferring ownership of the METS™ and Demag to CLCA; and

WHEREAS, CLCA desires to provide training services using the METS™ and Demag which are now located in KCHS in the vicinity of the pool; and

WHEREAS, use of KCHS is subject to Board Policy 1330, Administrative Regulation 1330, and approval of a completed Room/Building Use application.

NOW, THEREFORE, in consideration of the promises and agreements contained herein, the parties do hereby agree as follows:

1. **AUTHORIZATION TO USE FACILITY.** Subject to the terms and conditions of this agreement, applicable school district policies, and of the Room/Building Use Application approved for each period of use, the Borough and District authorize CLCA to utilize the Kenai Central High School facility to conduct classes utilizing the METS™, Demag, and school pool facility. Use of all school district buildings and equipment for this program is subject to the advance approval of the appropriate school district administrator(s) who are responsible for the school district building and equipment.
2. **TERM.** This Agreement is effective commencing _____, and ending _____, unless terminated earlier as provided below.
3. **RENEWAL.** The term of this Agreement may be extended by mutual written agreement of the parties.
4. **PERMITS, LAWS AND TAXES.** CLCA shall acquire and maintain in good standing all permits, licenses and other entitlements necessary for the authorized use of KCHS facilities including operation of any equipment on school property under this Agreement, and shall require any contractors to comply with the terms and conditions of this provision. All actions taken by CLCA and any contractors under this Agreement shall comply with all applicable federal, state, and local regulations including, but not limited to, those laws related to wages, taxes, social security, workers

compensation, occupational safety and health, nondiscrimination, licenses, and registration requirements. CLCA shall pay any and all taxes pertaining to its performance under this Agreement.

5. USE OF FACILITIES. In addition to the terms and conditions contained in this agreement and the approved Room/Building Use Application, the use of the KCHS pool and associated facilities shall be subject to the following:
- a. CLCA shall ensure that its officers, employees, agents, contractors, students, and other persons in the facility pursuant to CLCA's use, shall at all times comply with all pool rules in effect at the time of the usage. A copy of the current pool rules are attached hereto as Exhibit 1. If the pool rules are modified at any time while this agreement is in effect the District will provide CLCA a current copy.
 - b. CLCA shall be responsible for all costs other than routine costs incurred for cleaning and repairing the pool and facilities due to the use by CLCA pursuant to this agreement.
 - c. At all times, preference in scheduling of the pool and associated facilities shall be given to the organized activities of the Kenai Peninsula Borough Schools and other organizations in accordance with District Policy 1330 and associated regulations.
 - d. CLCA shall conduct its training programs in full compliance with the Coldwater Survival Egress Training Standard Operating Procedures (SOP) effective March 1, 2011, or updates approved in advance by the District. Nothing in this agreement shall be construed to mean that the District is in any way responsible or liable for the inadequacy of, or failure of CLCA to comply with, its SOPs, and the District specifically denies any such responsibility or liability.
 - e. CLCA agrees that it shall not allow any person to be dropped into the pool from a height greater than 5 feet, and that such drop may only occur in the deep end of the pool.
 - f. CLCA agrees to prepare a Site Specific Emergency Action Plan for use at the District facilities, which it shall promptly provide to the borough safety officer for approval upon request of the Borough or District.
 - g. Prior to the commencement of each training class in the pool facility, both CLCA and the District shall designate a lead contact person and notify the other party of that person's identity. At that time, CLCA shall provide the District with at least 5 minutes to review the pool rules with the class and CLCA shall use additional time to fully review its Site Specific Emergency Action Plan with the class.
 - h. If either party has concerns regarding the conduct of the other party during a training session, that concern shall be communicated by the lead of the concerned party to the lead of the other party. It is agreed that the class shall not be interrupted by school district lifeguards except in an emergency where, in their judgment as lifeguards immediate action is necessary to prevent or limit imminent injury to any persons or serious imminent damage to school district property. Recognizing that lifeguards are not authorized to directly interrupt the training operations provided those operations do not violate the Pool Safety Rules, this provision does not supersede the underlying safety rule that the lifeguards are in charge of the pool and occupants at all times, and that all occupants are required to comply with their request or directives. Any training session will be immediately ended if a lifeguard request or directive is not followed.

- i. It is agreed and understood that CLCA will only allow students who have already completed the appropriate classroom training, or people who are otherwise fully qualified to enter the operating METS™ unit, to enter the METS™ unit while it is in operation.
- j. CLCA agrees and commits that all of its instructors, divers, hoist operators, and any other persons it employs to participate in conducting the authorized training classes are fully and properly trained and certified to perform their duties in the training classes. CLCA shall provide the District with lists of all trainers' and divers' and their certifications upon request by the District.
- k. The District shall provide a minimum of two lifeguards for each class, and CLCA may not conduct a class in the pool or using the equipment without the presence of the two District lifeguards. CLCA shall pay the applicable charges for such lifeguards as set out in the approved Room/Building Use Application.
- l. CLCA agrees that it shall comply with all provisions of the METS™ user manual, including without limitation ensuring that the control lanyard at the aft end of the METS™ is properly connected to the METS and that it is secured to the existing strong point on the pool deck that was constructed for this purpose, or as may be replaced by the Borough and District. It is understood and agreed that the strong point must be an object sufficiently heavy and secure that it is capable of controlling the movements of the METS™ unit.
- m. It is agreed that each party shall have the right to use no more than 50 percent of the storage room space that was constructed in 2007 as a part of the building modifications made for the METS™ facility. This provision may be adjusted upon mutual written agreement of the school administrator and the Chief Executive Officer of CLCA or designees. Copies of any such written agreements shall be provided to both parties.

~~6. **THE MANAGEMENT COMMITTEE.** The parties will form a Management Committee consisting of a representative for each of the following: the District, the Borough, and CLCA. The Management Committee will meet quarterly, and discuss the previous quarter's activities and those planned for the future. The borough and district retain the right to review the proposed programs and activities and make suggestions concerning same as they relate to school district policies and procedures, and to reject proposals that are inconsistent with school district policies or applicable law related to the use of school district facilities and equipment by the public.~~

- 7. **INDEMNIFICATION.** CLCA shall defend, indemnify and hold harmless the Borough and District and their elected and appointed officers, agents and employees, from and against any and all claims, demands, lawsuits, or liability of any nature, kind or character, including costs, expenses, and attorney's fees, and costs, resulting from CLCA', or CLCA' officers, agents, employees, partners, attorneys, contractors, subcontractors and suppliers, performance or failure to perform this Agreement in any way whatsoever. However, CLCA shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the Borough, the District, or their elected and appointed officers, agents and employees. CLCA shall also not be required to defend or indemnify the Borough or District for damage or loss that has been found to be attributed to an independent contractor directly responsible to the Borough or School District under separate written contract.
- 8. **INSURANCE.** CLCA and any of its contractors shall purchase and maintain at a minimum the insurance coverages specified below in this section. CLCA and all of its contractors providing services pursuant to this contract shall also purchase and maintain minimum insurance coverage as specified in paragraphs Band C of this section. All insurance coverage shall be in acceptable

form, and for the amounts specified by the Borough and District, or as required by law, whichever is greater. This insurance coverage shall remain in effect for the life of this Agreement. This insurance shall be primary and exclusive of any other insurance carried by the Borough and District, including self-insurance.

- A. Commercial general/automobile liability insurance shall not be less than \$2,000,000 combined single limit bodily injury and property damage per occurrence, including a specific endorsement providing coverage for all claims arising out of operating and maintaining the METS™ and Demag and conducting the training programs authorized by this agreement.
- B. Worker's compensation and employers liability insurance shall be provided for all employees per Alaska State Statutes who are performing work under this Agreement.
- C. Certificate(s) of insurance as described in paragraphs A and B of this section shall be provided by CLCA and by CLCA' contractors performing services pursuant to this agreement, or their insurance companies or their agents. The Borough and District shall be named as additional insureds on the policies specified in paragraph A for the uses specified in this Agreement. Certificates of insurance, acceptable in form and content, will be delivered to:

Kenai Peninsula Borough
Risk Management Department
144 N. Binkley Street
Soldotna, AK 99669

- D. There shall be no cancellation or material change of the insurance coverages, or intent not to renew the insurance coverages as specified in this Agreement, without thirty (30) days prior written notice to the Borough. Notice of cancellation, material change in coverage, or intent not to renew will be delivered to the address designated in paragraph C of this section. Cancellation or material change in insurance coverage without written authorization by the Borough is a material breach of this Agreement, and subjects this Agreement to termination for cause.
- E. Upon renewal or change in policies during this Agreement, certificates of insurance shall be delivered to the address designated in paragraph C of this section.

- 9. **OWNERSHIP UPON TERMINATION.** Upon termination of this agreement, except as otherwise provided below, the modifications made to KCHS pursuant to this agreement shall remain the property of the Borough. The METS™ and Demag shall remain the property of CLCA and shall be removed by CLCA or its contractors at its sole expense within 60 days of termination of this agreement. The monorail shall be removed or left in place at the sole option of the Borough and School District.
- 10. **TERMINATION.** Either party may terminate this Agreement in whole or in part at any time without cause by giving written notice to the other party of such termination at least thirty (30) days before the effective date of such termination.
- 11. **MEDIATION.** If any dispute arises out of or relates to this Agreement, or the breach thereof, the parties shall first meet, confer, and attempt to settle the dispute. If the dispute cannot be settled through such direct negotiations, the parties agree to try in good faith to settle the matter by non-binding mediation. The parties shall jointly agree on an impartial mediator within 30 days of either party's demand to submit the dispute to mediation and, unless otherwise agreed, the parties will follow the mediator's rules of procedure. If the parties cannot agree on a mediator within 30 days of a demand, and any extensions that may be agreed to by both parties, then either party may initiate mediation to be administered by the American Arbitration Association under its Commercial Mediation Procedures. All costs of mediation, including the mediator's fees and expenses, will be

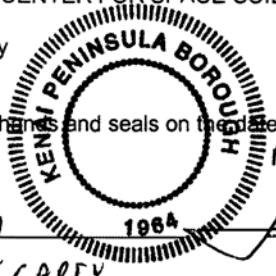
shared equally by the parties. Each party will bear its own attorneys' fees and costs. Neither party may commence litigation unless and until such matter has been submitted to mediation as required in this section.

- 12. **JURISDICTION; CHOICE OF LAW.** Any civil action arising from this Agreement shall be brought in the superior court for the third judicial district of the State of Alaska at Kenai. The law of the State of Alaska shall govern the rights and obligations of the parties.
- 13. **AMENDMENT.** This Agreement may be amended only by a written document executed by the parties.
- 14. **SEVERABILITY.** If any section or clause of this Agreement is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of this Agreement shall remain in full force and effect.
- 15. **NOTICE AND AUTHORIZED AGENTS.** Any notice required pertaining to the subject matter of this Agreement shall be personally delivered or mailed by prepaid first-class, registered or certified mail to the following individuals, who are authorized to act as the agents on behalf of the parties to this agreement, at the following addresses:

KENAI PENINSULA BOROUGH SCHOOL DISTRICT
Superintendent
148 North Binkley
Soldotna Alaska 99669
907-714-8888

KENAI PENINSULA BOROUGH
Borough Mayor
144 N. Binkley
Soldotna, Alaska 99669
907-262-4441

ALASKA CHALLENGER CENTER FOR SPACE SCIENCE TECHNOLOGY, INC.
President
9711 Kenai Spur Highway
Kenai Alaska 99611



The parties do hereby set their hands and seals on the dates provided below.

Kenai Peninsula Borough:

David R. Carey
Printed Name: **DAVID R. CAREY**
Kenai Peninsula School District:

Dave Jones
Printed Name: **DAVE JONES**

ATTEST: Johni Blankenship, Borough Clerk

Johni Blankenship
Date: 5/5/11

Date: ---

~~Alaska Challenger Center For Space Science Technology, Inc.:~~

~~Uam r! / k " C~~
Printed Name: ~~Uam r! / k " C~~

Date: ~~---~~

~~KCHS (CO) Inter-Training Facility Usage Agreement~~

Date: ~~5/td/11~~
Printed Name: ~~C!() UJ,+(Gf,"}~~

ACKNOWLEDGMENTS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 2 day of May, 2011, by David R. Carey, Mayor of the Kenai Peninsula Borough, an Alaska Municipal corporation, for and on behalf of the corporation.



[Signature]
Notary Public for State of Alaska
My Commission Expires: 9/07/14

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 5th day of May, 2011, by David Jores, President of Kenai Peninsula Borough School District (title)

[Signature]
Notary Public for State of Alaska
My Commission Expires: 8-15-2014

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 5th day of May, 2011, by Lucy Coff, President for and on behalf of ALASKA CHALLENGER CENTER FOR SPACE SCIENCE TECHNOLOGY, INC.

[Signature]
Notary Public for State of Alaska
My Commission Expires: 8-15-2014

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 12th day of May, 2011, by Stephen W. Hanson, for and on behalf of ALASKA CHALLENGER CENTER FOR SPACE SCIENCE TECHNOLOGY, INC.

[Signature]
Notary Public for State of Alaska
My Commission Expires: 8-15-2014

EXHIBIT 1 TO KCHS HELICOPTER TRAINING FACILITY USAGE AGREEMENT

POOL RULES:

1. Absolutely no one may enter the water unless there is a lifeguard on duty.
2. A shower is required of all patrons before entering the pool in order to comply with the State Health Code.
3. Any swimmer with open sores, infections or other questionable ailments must present written confirmation from a doctor that the condition is not contagious.
4. There will be no eating, drinking, alcohol, or gum of any kind allowed in the pool area and the locker rooms. (Plastic water bottles allowed)
5. Kick boards and pull buoys will be available for use during Lap Swim. These items are to be placed, not thrown, back in the storage area.
6. There will be no kickboards, rafts, or artificial supports (water wings) or any other supporting inflatable devices during open swim. The reasoning is simple; if they are inflatable they are also de-flatable. The lifeguard on duty must check to make sure all lifejackets are U.S. Coastguard approved.
7. There will be no running, rough play, spitting, swearing, or vulgarity of any kind in the pool facility. Splashing, water fights; dunking and shoulder rides are also prohibited.
8. All street shoes must be removed before walking on the pool deck.
9. No playing on or around the guard stands, railings, benches, diving boards, or ladders.
10. No tobacco products of any kind are allowed on school grounds.
11. Lifeguards will not hold valuables for patrons. Patrons are responsible for any lost or stolen valuables.
12. Lifeguards will not save something for someone coming in to pick it up.
13. No one under the influence of alcohol or drugs will be allowed in the pool facility.
14. Any patron disobeying pool rules, disturbing or endangering other patrons may be asked to leave.
15. Release of bodily fluids in the pool is prohibited.
16. Children in diapers must wear rubber pants while in the pool. The rubber pants must completely cover the child's diaper.
17. Non-swimmers that don't meet the height requirement must be within an arm's distance from a parent or adult.
18. All personal injuries must be reported to the guard on duty.
19. Limit conversation with guard(s) on duty to necessary comments.
20. Proper swimwear is required in the pool.
21. No non-swimmers in deep water.
22. When required by pool staff, a swim test must be passed to be in the deep water.
23. Diving blocks are not to be used unless under the direct supervision of a USA coach or other certified instructor with the Management approval.
24. Lane lines will be used only as safety lines in case of an emergency. There will be no hanging allowed on the lane lines at any other time.
25. Children who have attained the age of five (5) years and older must use locker room of own sex when changing clothes for swimming or bathroom use.
26. No heavy petting or sexual contact is allowed in or near the pool.

DIVING RULES:

Approximately 90% of all serious diving accidents occur in water that is less than five (5) feet deep. Serious diving accidents rarely involve springboards or towers. All shallow water areas are clearly marked "NO DIVING." Please enforce this rule! The diving board provides more of a traffic control problem. Injuries on this equipment will most often occur by divers falling off the equipment on to the deck or landing on other swimmers/divers in the water. When children are using the board, insist on close adult supervision.

1. All those using diving boards must be able to swim 25 yards unassisted.
2. One person on a diving board at a time and no running on the diving board.
3. Diver should wait his/her turn on the deck, never on ladder steps.
4. No hanging off diving boards.
5. No excessive bouncing on board; one bounce only.
6. No bouncing or springing others from diving board.
7. No hand stands, cartwheels or hanging from the board.
8. No back dives, cartwheels, handspike or flips from the side of the pool.
9. No diving from the side of the board.
10. No swimming in the diving area while the board is in use.
11. Use the ladder upon exiting from the diving area.
12. No diving from the sides of the diving area while the board is in use.
13. No tampering with the diving board fulcrums.
14. Goggles, masks, and other such equipment may not be worn or used while using the diving board.
15. Any diver exhibiting dangerous activity from the diving board may be asked to discontinue such activity.
16. No running on the diving boards.
17. No diving in shallow end of the pool.

CHALLENGER

ALASKA CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not constitute an endorsement in lieu of such endorsement(s).

PRODUCER	Commercial Lines - (907) 235-8105 Wells Fargo Insurance Services USA, Inc. 4014 Lake Street, Suite 101 Homer, AK 99603-7692	2nd cT Bonnie Mastolier, CIC Agent No: 907-235-8105 Email: bonnie.mastolier@wellsfargo.com	Insurer No:
		INSURER(S) AFFORDING COVERAGE INSURER A: Great Divide Insurance Company	
INSURED	Alaska Challenger Center for Space Science Technology, Inc. 9711 Kenai Spur Highway	INSURER B:	
		INSURER C:	
		INSURER D:	

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COVERAGES — CERTIFICATE NUMBER: 2719544 — REVISION NUMBER: See below

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

PRODUCER
INSURED
GENERAL LIABILITY
EXCLUSIONS AND CONDITIONS OF SUCH POLICIES

ADDITIONAL COVERAGE: 10:3M8, 11:W 6% LIMITS

EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

A GENERAL LIABILITY X GC945080 05/03/2011 05/03/2012 EACH OCCURRENCE \$ 2,000,000

EXCLUSIONS AND CONDITIONS OF SUCH POLICIES

~~CERTIFICATE HOLDER — CANCELLATION~~

~~SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE
Kenai Peninsula Borough and School District THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN
ACCORDANCE WITH THE POLICY PROVISIONS.~~

~~AUTHORIZED REPRESENTATIVE —~~



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