

**AGREEMENT BETWEEN THE CITY OF BLOOMINGTON, MINNESOTA
AND
INDEPENDENT SCHOOL DISTRICT #271
FOR OLDER ADULT FITNESS PROGRAMS**

THIS AGREEMENT is made this _____ day of _____, 2018 between the City of Bloomington, a Minnesota municipal corporation located at 1800 West Old Shakopee Road, Bloomington, Minnesota 55431 (hereinafter referred to as the "City"), and Independent School District 271, through its Community Education Department, located at 1350 West 106th Street, Bloomington, Minnesota 55431 ("School District").

WITNESSETH

WHEREAS, the City recognizes the need for priority services that focus on supporting families and extended families with low-income, older adults, multicultural communities, and individuals with disabilities and that have the characteristics of being community-based, culturally-relevant, focus on prevention and early intervention, build on strengths and resources of families and are results-oriented; and

WHEREAS, the City desires to to provide health and fitness programs for the City's older adults; and

WHEREAS, the School District represents that it has the professional expertise and capabilities to provide health and fitness programs that include but are not limited to: aerobics, yoga, pilates, T'ai Chi, and Jazzercise to older adults ("Older Adult Fitness Programs"); and

WHEREAS, the City desires to have the School District operate and provide Older Adult Fitness Programs in the community; and

NOW, THEREFORE, in consideration of the terms and conditions expressed herein, the parties agree as follows:

I. TERM OF AGREEMENT

The term of this Agreement is from January 1, 2019 through December 31, 2020, subject to termination as provided in Article V.

II. DUTIES OF SCHOOL DISTRICT

- A. The School District shall offer Older Adult Fitness Programs targeted toward adults who are 50 years of age and older.
- B. The School District agrees to promote the availability of the Older Adult Fitness Programs in its Community Education catalog. Value of advertising in the Community Education Catalog is determined annually by the School District.
- C. The School District shall provide registration services for the Older Adult Fitness Programs in the following manner:
 1. The School District agrees to charge and collect fees for classes based on the formula of: hourly dollar value of instructor pay times number of classes divided by the minimum number of participants required for the session, plus administrative fee. The ability to participate in the Older Adult Fitness Programs will be offered to both residents and non-residents of Bloomington.
 2. The minimum number of participants required for each Older Adult Fitness Program will be determined on a session by session basis by the School District to ensure that, at a minimum, the registration fees cover the cost of instructor fees for that session. If the required minimum number of participants do not register for the Older Adult Fitness Program, the session may be cancelled, as determined by the School District .
 3. The maximum number of participants for each Older Adult Fitness Program may vary depending on the type of Older Adult Fitness Program being offered, and the location where the sessions will be held.

4. Participation in the Older Adult Fitness Programs will be on a first-come, first-served basis.
 5. The School District further agrees to collect a liability waiver from each participant that registers for the Older Adult Fitness Programs described herein. Said liability waiver shall state that the participant agrees to waive all liability for both the School District and the City that may arise from their participation in the Older Adult Fitness Programs. The content of the waiver shall be subject to approval by both the School District and the City.
- D. The School District shall provide qualified instructors to teach the sessions. If certification is necessary for an instructor, the School District will obtain and maintain copies of the certification form.
- E. Older Adult Fitness Programs may take place at the School District's Community Education Campus or other School District locations as agreed upon by both parties.
- F. The School District agrees to perform a participant and program satisfaction evaluation at the end of each session.
- G. To the fullest extent allowed by law and contract, the School District shall defend, indemnify and hold harmless the City, its officers, officials, agents, and employees, from any and all claims, causes of action, lawsuits, damages, losses, or expenses, including attorney fees, arising out of or resulting from the School District's (including its guests, invitees, members, officers, officials, agents, employees, volunteers, representatives and/or subcontractors) performance of the duties required under this Agreement, provided that any such claim, damages, loss or expense is attributable to bodily injury, sickness, diseases or death or to injury to or destruction of property including the loss of use resulting therefrom and is caused in whole or in part by any negligent act or omission or willful misconduct of School District, its guests, invitees, members, officers, officials, agents, employees, volunteers, representatives and/or subcontractors.

- H. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto for any purpose in any manner whatsoever. The School District and its staff are to be and shall remain an independent contractor with respect to all services performed under this Agreement.
- I. The parties agree to comply with the Minnesota State Human Rights Act, Minnesota Statutes, Chapter 363A, as amended.
- J. To the fullest extent allowed by law, the School District agrees to maintain the following insurance coverages, in an amount equal to, or greater than, the minimum limits described below. School District will provide the City with a certificate of insurance evidencing such coverages prior to performing any duties included under the terms and conditions of this Agreement. School District also agrees to keep a valid certificate of insurance on file, referencing these limits, throughout the entire term of this Agreement.

1. Commercial General Liability Insurance in the amount of at least \$1,500,000 per occurrence for bodily injury or death arising out of each occurrence, as well as \$1,500,000 per occurrence for property damage.

To meet the above requirements, the School District may use a combination of Commercial General Liability and Umbrella coverage, as long as the City approves such use and it is evidenced on the Certificate of Insurance naming the City as an additional insured on both policies. The Umbrella needs to be a following form coverage and provide a thirty (30) day notice of cancellation.

2. Business Automobile Insurance in the amount of \$1,500,000 per occurrence for bodily injuries or death arising out of each occurrence, as well as \$1,500,000 per occurrence for property damage.

To meet the above requirements, the School District may use a combination of Business Automobile Liability and Umbrella coverage, as long as the City

approves such use and it is evidenced on the Certificate of Insurance naming the City as an additional insured on both policies. The Umbrella needs to be a following form coverage and provide a thirty (30) day notice of cancellation.

3. Workers' Compensation Insurance as required by Minnesota Statutes, Section 176.181, subd. 2.
4. School Leaders Legal Liability The School District agrees to maintain school leaders legal liability in at least the amount of \$1,000,000 during the term of this Agreement. The School District agrees to provide the City with a certificate of said insurance.
5. The School District agrees to name the City as an additional insured on its Commercial General Liability policy, and to provide an endorsement of such status. In addition, the School District agrees to notify the City thirty (30) days prior to cancellation or a change in any of the aforementioned insurance policies. All insurance must be provided at the School District's expense and at no additional cost to the City.

K. The School District agrees that the City will own and have the right to use, reproduce and apply as it desires, any data, reports, analyses and materials which are collected or developed by the School District or anyone acting on behalf of the School District as a result of this Agreement, provided all rules and laws as to privacy are followed.

III. DUTIES OF THE CITY

A. The City, in its sole discretion, shall provide space for the Older Adult Fitness Programs at the Bloomington Army National Guard Armory (the "Armory"), the Bloomington Ice Garden ("BIG"), or the Bloomington Center for the Arts ("BCA") depending on availability and class size. The estimated maximum annual value of meeting space is TEN THOUSAND DOLLARS (\$10,000.00) based upon the fees as approved by the Bloomington City Council annually.

- B. The City shall advertise the programs using marketing tools such as its newsletters, website, and flyers.
- C. To the fullest extent allowed by law and contract, the City shall defend, indemnify and hold harmless the School District, its guests, invitees, members, officers, officials, agents, employees, volunteers, representatives and/or subcontractors, from any and all claims, causes of action, lawsuits, damages, losses, or expenses, including attorney fees, arising out of or resulting from the City's (including its officers, officials, agents, or employees) performance of the duties required under this Agreement, provided that any such claim, damages, loss or expense is attributable to bodily injury, sickness, diseases or death or to injury to or destruction of property including the loss of use resulting therefrom and is caused by an negligent act or omission or willful misconduct of the City including its officers, officials, agents, or employees.
- D. To the fullest extent allowed by law, the City agrees to maintain the following insurance coverages, in an amount equal to, or greater than, the minimum limits described below. City will provide the School District with a certificate of insurance evidencing such coverages prior to performing any duties included under the terms and conditions of this Agreement. School District also agrees to keep a valid certificate of insurance on file, referencing these limits, throughout the entire term of this Agreement.
1. Municipal Liability Insurance in the amount of at least \$1,500,000 per occurrence for bodily injury or death arising out of each occurrence, as well as \$1,500,000 per occurrence for property damage.
 2. Workers' Compensation Insurance as required by Minnesota Statutes, Section 176.181, subd. 2.

3. The City agrees to name the School District as an additional insured on its Municipal Liability policy, and to provide an endorsement of such status. In addition, the City agrees to notify the School District thirty (30) days prior to cancellation or a change in any of the aforementioned insurance policies. All insurance must be provided at the City's expense and at no additional cost to the School District.

IV. GENERAL PROVISIONS

- A. Entire Agreement. This Agreement represents the entire Agreement between the School District and the City and supersedes and cancels any and all prior agreements or proposals, written or oral, between the parties relating to the subject matter hereof; and amendments, addenda, alterations, or modifications to the terms and conditions of this Agreement shall be in writing and signed by both parties.
- B. Americans with Disabilities Act and TTY Requirements. The School District agrees to comply with the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act of 1973 ("Section 504") and not discriminate on the basis of disability in the admission or access to, or treatment of employment in its services, programs, or activities. The School District agrees to hold harmless and indemnify the City from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of ADA and/or Section 504 caused by the School District. The City agrees to hold harmless and indemnify the School District from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of ADA and/or Section 504 caused by the City. Upon request accommodation will be provided to allow individuals with disabilities to participate in all services, programs and activities. The School District agrees to utilize their own text telephone or the Minnesota Relay Service in order to comply with accessibility requirements. The City has designated coordinators to facilitate compliance with the ADA, as required by Section 35.107 of the U.S. Department of Justice regulations, and to coordinate

compliance with Section 504, as mandated by Section 8.53 of the U.S. Department of Housing and Urban Development regulations.

- C. Minnesota Government Data Practices Act. The School District will comply with all applicable provisions of the Minnesota Government Data Practices Act, Chapter 13 of the Minnesota Statutes, as amended.
- D. Applicable Laws. This Agreement shall be interpreted using the laws of the State of Minnesota. The School District agrees to comply with all applicable local, state and federal laws, rules, regulations and ordinances in the performance of the duties of this Agreement.
- E. Assignment. This Agreement shall not be assignable except with the written consent of the City.
- F. Examination of Documents. The books, records, documents, and accounting procedures of the School District, relevant to this Agreement, are subject to examination by the City, and either the legislative or state auditor as appropriate, pursuant to Minnesota Statutes, Section 16C.05, Subdivision 5.
- G. Mediation. Both parties agree to submit all claims, disputes and other matters in question between the parties arising out of or relating to this Agreement to mediation. The mediation shall be conducted through the Conflict Resolution Center, 2101 Hennepin Avenue, Suite 100, Minneapolis, Minnesota 55405. The parties hereto shall decide whether mediation shall be binding or non-binding. If the parties cannot reach agreement, mediation shall be non-binding. In the event mediation is unsuccessful, either party may exercise its legal or equitable remedies and may commence such action prior to the expiration of the applicable statute of limitations.
- H Payment of Subcontractors. The School District agrees that it must pay any subcontractors within ten (10) days of the School District's receipt of payment from the municipality for undisputed services provided by the subcontractor. The School District agrees that it must pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the

subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the School District shall pay the actual penalty due to the subcontract. A subcontractor who prevails in a civil action to collect interest penalties from a School District must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

- I. Adherence to City Policies. The School District agrees, as a condition of being awarded this Agreement, to require each of its guests, invitees, members, officers, officials, agents, employees, volunteers, representatives and/or subcontractors to abide by the City's policies prohibiting sexual harassment, firearms and smoking, as well as all other reasonable work rules, safety rules or policies regulating the conduct of persons on City property at all times while performing duties pursuant to this Agreement. The School District agrees and understands that a violation of any of these policies or rules constitutes a breach of the Contract and sufficient grounds for immediate termination of the Agreement by the City.
- J. Audit. The books, records, documents, and accounting procedures of the School District, relevant to this Agreement, are subject to examination by the City, and either the legislative or state auditor as appropriate, pursuant to Minnesota Statutes, Section 16C.05, Subdivision 5.
- K. Entire Agreement. Agreement represents the entire Agreement between the School District and the City and supersedes and cancels any and all prior agreements or proposals, written or oral, between the parties relating to the subject matter hereof; any amendments addenda, alterations, or modifications to the terms and conditions of this Agreement shall be in writing and signed by both parties.
- L. Severability. If any provision or term of this Agreement for any reason is declared invalid, illegal or unenforceable such decision shall not affect the validity of any remaining terms or conditions in this Agreement,
- M. Signatory. Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on

behalf of such party, with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder. In the event the School District did not authorize the Signatory to sign on its behalf, the Signatory agrees to assume responsibility for the duties and liability of the School District, as set forth herein, personally. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument.

V. TERMINATION

Either party may terminate this Agreement for any reason or no reason at all upon giving thirty (30) days' advanced written notice to the other party.

Both parties reserve the right to cancel this Agreement immediately in the event of default or violation by the Contractor of any provision of this Agreement. The City may take whatever action at law or in equity that may appear necessary or desirable to collect damages arising from a default or violation or to enforce performance of this Agreement.

[REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF BLOOMINGTON, MINNESOTA

DATED: _____ BY: _____

Its: City Manager

Reviewed and approved by the City Attorney.

City Attorney

INDEPENDENT SCHOOL DISTRICT #271

DATED: _____ BY: _____

Its: Chairperson, Board of Education