

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

THIS AGREEMENT, is made this _____ day of _____, 2017 by and 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 located at 2575 88th Street West, Bloomington, Minnesota 55431 (hereinafter referred to as "School District").

WITNESSETH:

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

WHEREAS, the School District represents that it has the professional expertise and capabilities to provide health and fitness programs to older adults; and

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

I. TERM OF THE AGREEMENT

The term of this Agreement is from January 1, 2017 through December 31, 2018, subject to termination as provided in Article V.

II. DUTIES OF SCHOOL DISTRICT

- A. The School District, through its Community Education Department, agrees to offer fitness classes targeted at adults who are 50 years of age and older.

- B. The School District, through its Community Education Department, agrees to promote the availability of the Older Adult Fitness Program in its Bloomington/Richfield Community Education catalog, and through the City of Bloomington's publications including Parks and Recreation publications and the Bloomington Briefing. Value of advertising in the Community Education Catalog is determined annually by the Bloomington School District.

- C. The School District shall provide registration services 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 program would be offered to both residents and non-residents of Bloomington.

 - 2. The minimum number of participants required for each session will be determined on a session by session basis to ensure that, at a minimum, the registration fees cover the cost of instructor fees for that session. If less than the predetermined number of participants register, the fitness session will be cancelled. Maximum number of participants in programs vary according to the type of program and location where program is held.

 - 3. Participants shall be informed that Older Adult Fitness Programs attendance will be on a first-come, first-served basis.

4. The School District further agrees to collect a liability waiver from each participant that registers for the program described herein. Said liability waiver shall state that the participant waives all liability for both the School District and the City that may arise from their participation in the fitness session, and the language therein shall be subject to approval by both the School District and the City.
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- D. The programs may be provided at the National Guard Training and Community Center (the “Armory”), the Bloomington Ice Garden (“BIG”), the Bloomington Center for the Arts (“BCA”), or other City sites. Space may also be used at the School District’s Community Education Campus or other School District locations as agreed upon by both parties.
 - E. Fitness programs include a wide variety of types of programs which may include but are not limited to aerobics, yoga, pilates, T’ai Chi, and Jazzercise.
 - F. The School District, through its Community Education Department, shall provide qualified instructors at a pay rate agreed upon in writing by both parties. The instructors must meet the qualifications of the position and must show proof of certification. Copies of the certification form will be on file at the School District.
 - G. The School District agrees to perform a participant satisfaction evaluation and a program evaluation at the end of each session.
 - H. To the fullest extent allowed by law, 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.

- I. 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.

- J. The parties agree to comply with the Minnesota State Human Rights Act, Minnesota Statutes, Chapter 363A, as amended.

- K. 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. The 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. The 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.
3. Workers' Compensation Insurance as required by Minnesota Statutes, Section 176.181, subdivision 2.
4. Professional Liability Insurance in the amount of \$1,000,000 per occurrence.
5. 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.
6. 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.

III. DUTIES OF THE CITY

- A. The City agrees to provide meeting space to the School District at no charge at the Armory, BIG, and the BCA. 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 agrees to advertise the programs using marketing tools such as newsletters, web site, and flyers.

- C. To the fullest extent allowed by law, 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 a negligent act or omission or willful misconduct of the City including its officers, officials, agents or employees.

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 and the City agree 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 \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, 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 upon giving thirty (30) days' advanced written notice to the other party.

The City reserves the right to cancel this Agreement at any time in event of default or violation by the School District 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.

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

CITY OF BLOOMINGTON, MINNESOTA

BY: _____

Its: City Manager

Reviewed and approved by the City Attorney:

City Attorney

INDEPENDENT SCHOOL DISTRICT #271

BY: _____

Its: Chairperson, Board of Education