

FACILITY USE AGREEMENT AND WAIVER

This Facility Use Agreement and Waiver ("Agreement") is entered into by and between Independent School District No. 423 ("District") and _____ ("Organization").

WHEREAS, District Policy 902 generally governs the use of District facilities;

WHEREAS, pursuant to District Policy 902 and District Procedure 902P, the Organization has submitted an application to use the District's _____ space for a youth sports activity ("activity") and to have a District employee who is affiliated with the Organization supervise the activity; and

WHEREAS, the Organization is planning to have an active District employee supervise the activity;

NOW, THEREFORE, IN CONSIDERATION OF the mutual promises contained in this Agreement and other valuable consideration, the sufficiency of which is acknowledged, the parties agree as follows:

1. **Fee.** All fees in 902P are applicable, but custodial fees may be waived in accordance with this agreement.
2. **Organization Must Provide an Activity Supervisor.** The Organization will designate and provide an activity supervisor who is an active district employee for the activity. The District reserves the right to approve or disapprove of the site supervisor's eligibility to complete this assignment.
3. **Activity Supervisor Must Complete Training.** Before supervising a youth sports activity, the designated activity supervisor must complete all required training and then submit a site supervision training checklist.
4. **Activity Supervisor Must Be Present.** No participant may enter the building until the activity supervisor is on site and is ready to supervise the activity. The activity supervisor must be physically present for the duration of the activity. The activity supervisor may not give any building keys to any child, participant, or any untrained or unauthorized adult. If the person who was originally designated to serve as the activity supervisor changes, the keys must be returned to the District and then reassigned to the new activity supervisor.
5. **Activity Supervisor Is Not Considered a District Employee.** For all purposes related to this Agreement, the activity supervisor is deemed to be a representative of the Organization. The activity supervisor is not acting as an employee, agent, or representative of the District, regardless of whether the activity supervisor works for the District at other times.
6. **Activity Supervisor Responsibilities.** The activity supervisor has specific responsibilities before, during, and after each youth sports activity.
 - a. Before each activity, the activity supervisor must open the building, ensure that required lights are turned on, and ensure that no participants enter the building without the activity supervisor being present.

- b. During each activity, the activity supervisor must: (1) ensure someone from the Organization is stationed at the appropriate exterior doors to allow participants to enter; (2) ensure that no exterior doors are propped open; (3) remain on site and supervise all aspects of the activity; (4) ensure that participants stay within the limited area in which the activity is occurring; (5) prohibit lingering by any individual who is not participating in the activity or supervising the activity; (6) clean up any spills; (7) clean up any blood or vomit in compliance with the District's safety protocols, including the District's protocols and policies on blood borne pathogens and bodily fluids; and (8) ensure compliance with all building specific instructions that were provided during training.
 - c. After each activity, the activity supervisor must: (1) ensure all participants have left the building; (2) return all equipment to its proper storage location; (3) check bathrooms for any issues, such as running toilets, running sinks, and trash on floors; (4) pick up any garbage; (5) make a record of any damage; (6) turn off all lights; (7) lock the building; (8) verify that all exterior doors are closed and locked; (9) follow all building-specific instructions that were provided during training; and (10) submit a written report of any damage to the District.
- 7. **Liability for Property Loss or Damage.** The Organization is liable to the District for any property loss or damage that occurs in connection with the Organization's use of the District's facility. In the event of any loss or damage, the District will bill the Organization for all repairs or replacement costs, as determined by the District. The Organization must pay for all repairs or replacement costs within thirty calendar days of receiving a bill from the District.
- 8. **General Liability Insurance.** The Organization must provide a certificate of insurance confirming that the Organization maintains a policy of general liability insurance that complies with the District's facility use policy and names the District as an additional insured. The Organization agrees that any claim that arises out of or relates to the Organization's use of the District's facility—including, but not limited to, any claim for property damage, property loss, personal injury, sickness, or death—will fall under the Organization's insurance policy and not the District's insurance policy.
- 9. **Indemnification.** The Organization hereby agrees to defend, indemnify, and hold the District harmless from any claim or liability that arises out of or relates to the Organization's use of the District's facility, including, but not limited to, any claim or liability for property loss, property damage, personal injury, sickness, or death.
- 10. **Waiver and Release of Claims.** The Organization hereby waives any right to bring any claim, demand, legal action, or cause of action against the District, its board members, officers, directors, employees, agents, insurers, or representatives, unless the District has engaged in gross negligence or willful misconduct that directly causes harm to the Organization.
- 11. **District's Right to Terminate Agreement.** This Agreement is not a lease. The parties agree that the District has the unilateral right to terminate and cancel this Agreement at any time as it deems appropriate. In the event of termination and cancellation, the Organization may not bring a claim against the District for any loss, damage, or expense that it incurs. The following are examples of reasons why the District would choose to terminate and cancel this Agreement: inadequate supervision; safety concerns; unacceptable or inappropriate conduct by a supervisor or participant;

emergency situations, including inclement weather; or violation of any District policy, protocol, or training instruction.

12. Relationship of the Parties. Nothing in this Agreement may be construed to create an employment relationship, a partnership, a joint venture, or a joint enterprise between the Organization and the District. The Organization is separate from, and not part of, the District.

13. Choice of Law and Severability. This Agreement is governed by the laws of the State of Minnesota. If a court construes any part of this Agreement to be unenforceable or in violation of any applicable law, the remaining portions of the Agreement will remain in full force and effect.

14. Waiver and Equal Drafting. Waiver by either party of any term or condition of this Agreement will not constitute a waiver of any other term or condition of this Agreement. If either party asserts that a provision of this Agreement is ambiguous, the Agreement must be construed to have been drafted equally by the parties.

15. Entire Agreement. This Agreement reflects the entire agreement between the parties. Neither the District nor the Organization has relied on any statement, promise, or representation that is not stated in this Agreement. The terms of this Agreement are contractual and supersede any and all prior agreements between the parties and any inconsistent provisions in any employee handbooks or policies. No waiver or modification of any provision of this Agreement will be valid unless it is in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the dates recorded by their signatures.

ORGANIZATION

Authorized Representative

Date

INDEPENDENT SCHOOL DISTRICT NO. 423

School Board Chair

Date

School Board Clerk

Date