

Use of Facilities Contract Incorporating a Release, Waiver of Liability, and Indemnity Contract

This Use of Facilities Contract ("Agreement") is made and entered into as of _____, 2018 (Effective Date) by Boone County School District (hereinafter referred to as BCS), and the YMCA of Greater Cincinnati/R.C. Durr Branch (hereinafter referred to as YMCA). BCS and YMCA are sometimes referred to herein as "parties" and each individually as a "party."

WHEREAS, BCS is committed to providing a positive, enriching and challenging learning environment to help all children reach their full potential. Through rigorous instruction, employing 21st century skills of communication, collaboration, critical thinking and creativity, we strive to make all students lifelong learners and productive positive members of society.

WHEREAS, BCS desires to provide Youth Sports Programming as a service to their students who attend Collins Elementary, Florence Elementary, and R.A. Jones Middle School; and the YMCA desires to work cooperatively with BCS to provide an asset-based approach to the delivery of the before mentioned services in accordance with the terms and conditions of this Agreement;

NOW THEREFORE, BCS and YMCA hereby mutually agree to install and implement the before mentioned services, as set forth herein.

IN CONSIDERATION of the mutual covenants contained herein and other good and valuable consideration, the adequacy of which is hereby acknowledged, the parties agree as follows:

I. PURPOSE:

The purpose of this Agreement is to establish the working relationship by and between the parties, based on the intent to meet the service delivery needs of the Youth Sports Programming, facility usage and to set forth the operative conditions which will govern this partnership.

II. DESCRIPTION OF PROGRAM SERVICES

A. YMCA's Agreement:

1. The hours of operation will be from **5:30 PM – 7:30 PM**, Monday through Friday, and **9:00 AM – 5:00 PM**, Saturdays.
2. The YMCA, at the schools discretion and approval, will provide all supplies and materials for the programs, including practice equipment, athletic equipment, uniforms, etc.
3. The YMCA will abide by all Federal, State, and Local laws.

4. Staff will be hired, trained, supervised and compensated exclusively by the YMCA. All staff will be required to complete the YMCA's child abuse prevention training and pass a background check prior to employment.
5. Volunteers will be hired, trained and supervised exclusively by the YMCA. All volunteers will be required to complete the YMCA's child abuse prevention training and pass a background check prior to volunteering.
6. All children will be supervised at all times by the YMCA staff and volunteers.
7. The YMCA will assume all administrative functions, including, but not limited to registration, purchasing, and all liability insurance on staff, volunteers, and program.
8. The YMCA will notify the school of all student participants in the program and update when necessary.

B. BCS Agreement:

1. The program will occupy and utilize the appropriate field space necessary to deliver the desired Youth Sports Programming located at R.A. Jones Middle School. BCS is responsible for maintaining safe and appropriate conditions for the desired activity.
2. BCS will remit payment within 30 days upon completion of each Youth Sports Program session for direct services and expenditures associated the activity, not to exceed the agreed upon amount.
3. BCS will be the lead party responsible for recruiting participants and volunteers for the desired program.
4. BCS will provide all utilities; including water, electricity and heat as needed.

III. TERM

This Agreement shall commence upon the Effective Date, and continue for a period of twelve months through _____, 2019. BCS representative and YMCA representative will meet at least quarterly to review this Agreement, including, but not limited to the programs and services provided.

This Agreement may be terminated by either party upon sixty (60) days prior written notice to the other. For purposes of this Agreement, written notice shall be deemed duly given if delivered in person to an authorized representative of the party, or delivered via courier (signature and proof of delivery required) or by US Certified Mail – Pre-Paid, with Receipt of Delivery Requested.

IV. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, and all other communications between the parties with respect to such matters.

V. AMENDMENTS

Amendments to this Agreement may be made only with the mutual written agreement of both parties.

VI. INSURANCE

Each party shall maintain insurance policies and coverage in its own name with respect to its own activities. During the term of this Agreement, each party shall carry: (a) Commercial General Liability Insurance with limits against claims for bodily injury (including death), personal injury, and property damage of not less than One Million Dollars (\$1,000,000) each occurrence; (b) Employment Practices Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) each occurrence; and (c) Worker's Compensation Insurance in an amount sufficient to comply with applicable laws and regulations. All insurance required under this Agreement shall be written with companies reasonably satisfactory to the other party. Each party shall provide the other party with certificates evidencing the insurance coverage required under this Agreement (and as reasonably requested thereafter), naming the other party as an additional insured with regard to the utilization of space and the activities/programs conducted therein, and providing for not less than thirty (30) days advance written notice to the other party.

VII. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by Law, Boone County Schools agrees to indemnify, defend and hold harmless YMCA, its Board of Trustees, officers, agents and employees from and against any and all claims, costs, demands, expenses (including attorney's fees), losses, damages injuries and liabilities arising from any accident, death, or injury whatsoever or however caused to any person or property, because of, arising out of, or related to BCS failure to comply with its duties, obligations and responsibilities created under this Agreement or its breach of any warranties and representations made hereunder. It is understood that such indemnity shall survive the termination of this Agreement.
- B. YMCA agrees to indemnify, defend and hold harmless Boone County Schools, its Board of Directors, officers, agents and employees from and against any and all claims, costs, demands, expenses (including attorney's fees), losses, damages injuries and liabilities, arising from or related to: (i) workers' compensation claims, overtime claims, tax liability claims, benefit claims or other liabilities imposed against BCS by an employee or other representative of the YMCA, or (ii) any accident, death, or injury whatsoever or however caused to any person or property, because of, arising out of, or related to this Agreement and the services/equipment

provided hereunder. It is understood that such indemnity shall survive the termination of this Agreement.

VIII. STATUS OF PARTIES

The parties hereto agree that the relationship created by this Agreement is that of independent contractors. Each party will be responsible for providing its own salaries, payroll taxes, withholding, insurance, workers compensation coverage and other benefits of any kind, as required by law, for its own employees.

IX. BACKGROUND CHECKS

In accordance with YMCA policy, the YMCA shall conduct a criminal background check of its employees and, upon receipt of the results, certify to BCS that all employees meet the YMCA employee guidelines.

X. FEES

The YMCA will set the program fees and will maintain responsibility of fee collection as it relates strictly to YMCA programming. All forms of payment will be recorded and reported by the YMCA according to policies and procedures.

XI. FORCE MAJEURE

Neither party shall be responsible, nor shall either be held liable to the other, for any non-performance or delay in performance of its obligations under terms or provision of this Agreement directly or indirectly resulting from any cause or circumstance beyond its control (including, by way of example, war, strike, riot or natural disaster) or failure of the other party hereto to fulfill any of its obligations hereunder.

XII. WRITTEN NOTICE

Written notices regarding this Agreement required to be provided herein, shall be sent, first class mail to the following representatives:

XIII. GOVERNING LAW, VENUE AND JURISDICTION.

This Agreement shall be construed in accordance with and governed by the laws of the Commonwealth of Kentucky, without regard to its conflict of laws principles.

The parties consent to exclusive jurisdiction and venue in the state courts of Boone County, Kentucky.

To: Boone County Schools

To: YMCA of Greater Cincinnati

XIV. APPROVALS

BCS Representative, TITLE

YMCA Representative, TITLE

Date

Date