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 May 30, 2020 (Effective Date) by Boone County Schools/Thornwilde Elementary (hereinafter referred to as TES), and the YMCA of Greater Cincinnati/R.C. Durr Branch (hereinafter referred to as YMCA). TES and YMCA are sometimes referred to herein as “parties” and each individually as a “party.”

WHEREAS, TES 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, TES desires to provide Extended Kindergarten and Before & After School Child Care programs on its campus as a service to their students and the YMCA desires to work cooperatively with TES 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, TES 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 both the Extended Kindergarten and Before & After School programs, facility usage and to set forth the operative conditions which will govern this partnership. The program will operate at no cost to the school, will not inconvenience or disrupt school operations and will be fully supported by parent fees. In the event that enrollment in the program is not sufficient to support its continued operation, the YMCA will notify the school and parents in writing at least sixty (60) days before ceasing operations.

II. DESCRIPTION OF PROGRAM SERVICES

A. YMCA’s Agreement:

1. The hours of operation will be from **6:30 AM – 6:00 PM**, Monday through Friday, on days when school is in session.

2. The YMCA will provide all supplies and materials for the programs, including locked storage cabinets which will be placed in unobtrusive areas of the designated rooms.

3. All licensing and KY STARS requirements will be the responsibility of the YMCA.

4. Staff will be hired, trained, supervised and compensated exclusively by the YMCA. The on-site director will possess a four year college degree in elementary education, early childhood education, recreation or related field, and will have successful experience working with school age children. The assistants will be caring adults who are experienced working with children, and will receive supplementary training from the YMCA.

5. Parents will pick up children at TES in the afternoon-within the school building or on the playground.

6. All children will be supervised at all times by the YMCA staff.

7. A daily snack will be provided by the YMCA staff, using pre-packaged, nutritious foods that won't require storage.

8. The YMCA will assume all administrative functions, including, but not limited to registration, purchasing, and all liability insurance on staff, volunteers, and program. The YMCA will retain all income and make all disbursements from parent and registration fees.

9. The YMCA will be responsible for one telephone installation and all ongoing costs related to that telephone's usage.

10. The YMCA will notify the school of all student participants in the program and update when necessary.

B. TES Agreement:

1. The program will occupy an appropriate area of the school, designated by the school principal. The school playground and gymnasium will be available daily to the program, weather and schedule permitting, and will be used only under the close supervision of the YMCA staff.

2. Any room used by the YMCA program, including bathrooms, will be reserved exclusively for the YMCA during the daily periods of time the children in the program are present.

3. TES will provide regular maintenance and cleaning services after the program closes at **6:00 PM** each day. However, YMCA staff will leave the premises in the same condition in which they found it each day the program operates.

4. TES will provide all utilities; including water, electricity and heat. TES will provide internet access for the use of administrative needs and requirements.

III. TERM

This Agreement shall commence upon the Effective Date, and continue for a period of twelve months through May 30, 2021. TES 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. .

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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 TES 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 TES 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 TES 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

Printed Name and Title	Printed Name and Title
Signature	Signature
Date	Date