

**FACILITY USE AGREEMENT  
BRAEMAR SPORTS FACILITY**

**between**

**CITY OF EDINA, MINNESOTA**

**INDEPENDENT SCHOOL DISTRICT NO. 273  
(EDINA), MINNESOTA**

**Dated September 4, 2024**

## FACILITY USE AGREEMENT

**THIS FACILITY USE AGREEMENT** (the "Agreement") made this 4<sup>th</sup> day of September, 2024 by and between the **CITY OF EDINA**, a Minnesota municipal corporation (the "City"), and **INDEPENDENT SCHOOL DISTRICT NO. 273 (EDINA), MINNESOTA**, an independent school district created and existing under the laws of the State of Minnesota (the "District") in regards to the use of the City's Braemar Arena "Facility" as well as the Locker Room "Locker Room" in the Facility.

**WITNESSETH THAT**, in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

### ARTICLE I Terms and Conditions

- 1.01. Term. This Agreement shall be for a term of four (4) years commencing on the date of signature, subject to the District's right to terminate this Agreement as set forth in Section 1.06.
- 1.02. Indemnification. Each party is responsible for its own acts and omissions and the results thereof to the extent authorized by law. Minnesota Statutes Chapter 466 and other applicable law govern the parties' liability. Each party to this Agreement expressly declines responsibility for the acts or omissions of the other party. In addition to the foregoing, nothing herein shall be construed to waive or limit any immunity from, or limitation on, liability available to either party, whether set forth in Minnesota Statutes, Chapter 466 or otherwise.
- 1.03. Dispute Resolution. City and District agree to resolve any disputes through the processes described in Section 1.031 and, if required, the process described in Section 1.03.2.
  - 1.03.1. Negotiation. The District Superintendent and the City Manager, or their designees, must promptly meet and attempt in good faith to negotiate a resolution in the event of any dispute between the parties arising under this Agreement.
  - 1.03.2. Mediation and Arbitration. If the City and the District have not negotiated a resolution of the dispute within 30 days after this meeting, the parties may jointly select a mediator to facilitate further discussion. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, all disputes arising under this Agreement will be submitted to binding arbitration before a panel of one (1) arbitrator in accordance with the commercial arbitration rules of the American Arbitration Association. The parties will equally share the costs of conducting any mediation or arbitration, excluding each party's cost for preparation of its own case.
- 1.04. Relationship of Parties. The City and the District agree that it is their intention hereby to create only the relationships of licensor and licensee, and no provision hereof, or act of either party hereunder, shall ever be construed as creating the relationship of lessor and lessee, principal and agent, or a partnership, joint venture or enterprise between the parties hereto.
- 1.05. Rights Cumulative. The rights and remedies of the City and the District under this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by such party, at the same or different times, of any other remedy for the same default or breach or of any of its remedies for any other default or breach of the party. The waiver by either party of any default by the other party under this Agreement, or the failure of either party to insist upon strict performance of any of the terms of this Agreement, will not be deemed to be a waiver by such party of any future default or of such party's right to insist upon strict performance by the other Party in the future.

- 1.06. Mutual Right to Terminate Agreement. The City and District shall both have the right to terminate this agreement with 30 days' notice.
- 1.07. Notices. All notices, certificates or other communications required to be given to the City and the District hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in registered or certified form with postage fully prepaid and addressed as follows:

If to the City:                      City of Edina  
   4801 W. 50th Street  
   Edina, Minnesota 55424-1330  
   Attn: City Manager

If to the District:    Independent School District No. 273  
   5701 Normandale Road  
   Edina, MN 55424  
   Attn: Superintendent

The City and the District, by notice given hereunder, may designate different addresses to which subsequent notices; certificates or other communications should be sent.

- 1.08. Amendments, Changes and Modifications. This Agreement may be amended or any of its terms modified only by written amendment as mutually agreed upon and executed by the City and the District.
- 1.09. Assignment. The City and the District may not assign their rights or obligations under this Agreement without the prior written consent of the other party.
- 1.10. Binding Effect. All the covenants, conditions and agreements herein contained shall extend to, be binding upon, and inure to the benefit of the parties hereto and their respective permitted successors and assigns.
- 1.11. Severability. If any provisions of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect,
- 1.12. Execution Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 1.13. Governing Law. This Agreement shall in all respects be governed by and interpreted under the laws of the State of Minnesota.
- 1.14. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope of intent of any provisions or sections of this Agreement.
- 1.15. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties relative to the subject matter hereof. The parties have not relied upon any promises, representations, warranties, agreements, covenants, or undertakings, other than those expressly set forth or referred to herein. This Agreement replaces and supersedes any and all prior oral or written agreements, representations and discussions relating to such subject matter.
- 1.16. Equal Drafting. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

**ARTICLE II**  
**Facility Ownership, Operation, and Maintenance**

- 2.01. Ownership. The City is the owner of the Facility and Locker Rooms, subject to the right and obligations of the parties set forth in this Agreement and in the Joint Powers Agreement.
- 2.02. Insurance. The City will be responsible to insure the Facility, including fixtures, and furnishings therein against loss or damage by fire and loss or damage by such other risks and in such amounts, with such deductible provisions, in accordance with prevailing community standards and the City shall carry and maintain, and pay timely the premiums for direct damage insurance covering all risks of loss on a replacement cost basis in an amount equivalent to the full insurable value thereof. Each party will obtain and maintain during the term of this Agreement a comprehensive liability insurance policy in at least the amounts specified as to the extent of liability under Minnesota Statutes, Section 466.04. The District will be named as an additional insured on the City's policy and the City will be named an additional insured on the District's policy. Each party shall furnish to the other party a certificate of insurance documenting the required coverage.
- 2.03. Operating and Utilities Costs. The City will provide for all electric, heat, phone, water, sewer, trash removal and other utilities, janitorial and other services (collectively "Operating and Utilities Costs"). As provided in Section 2.052, the District shall reimburse the City for all Operating and Utilities Costs incurred for the Locker Rooms areas included during the District's Exclusive Use Period. The City will maintain reasonable temperatures in the Locker Rooms during the District's use time; provided, the City is not required to provide air conditioning.
- 2.04. Maintenance and Upkeep. The City will be responsible for all maintenance, repairs, and upkeep of the Facility and Locker Rooms necessary to keep the Facility in good repair and clean condition. The City, at its sole expense, shall also maintain the internal roadway systems, parking areas, associated common areas and HVAC system used in connection with the Locker Rooms, including snow plowing, to the same standards as provided by the City to other City buildings.
- 2.05. Exclusive Use of Locker Rooms. The District shall have exclusive use of the Locker Rooms from October 15 through March 31 ("District's Exclusive Use Period"). The City shall have exclusive use of the Locker Rooms at all other times.
- 2.05.1 Locker Room Exclusivity Exception. The City and the District agree that the other party may schedule use of the Locker Rooms during the other party's exclusive use period, with the other party's consent. Such consent may not be unreasonably withheld.
- 2.05.2 Locker Room Expense Reimbursement Provision. – The District will reimburse the City for expenses related to maintenance, repairs, and upkeep of the Locker Rooms during the District's Exclusive Use period as provided in Section 2.05. Annual Locker Room expenses will be in arrears by the City. These costs will then be divided equally by the total ice time and invoiced as a single hourly ice time fee as described in Section 3.02.
- 2.06. Damage or Destruction of Locker Rooms. Upon any damage or destruction of any of the Locker Rooms by fire or other casualty, the City shall within one hundred twenty (120) days after such damage or destruction, commence the process required to repair, reconstruct and restore the damaged Locker Rooms to substantially the same condition or utility value as existed prior to the event causing such damage or destruction and shall diligently pursue such repair, reconstruction and restoration.

**ARTICLE III**  
**Fees for Facility Usage and Locker Room Exclusivity**

- 3.01. User Fees. The City will charge the District ice time user fees. The hourly rate for District-sponsored activity ice time uses shall be the same rate charged by the City to other users ("Fixed rate"). IN addition, as outlined in Section 2.052, the City will adjust its fixed rate to reflect the District's financial responsibilities outlined in Sections 2.03 and 2.052.
- 3.02. Ice time per council approved rate plus:
- 2024-25 = \$ 20/hour
  - 2025-26 = \$ 20.50/hour
  - 2026-27= \$ 21.50/hour
  - 2027-28 = \$ 22/hour
- 3.03. Payments by City to District. The City will invoice the District monthly for the charges in Section 3.01. The District will pay the invoice within 35 days of receipt of the invoice.
- 3.04. Ticket Sales. The District will pay the City fifty (50) percent of the adjusted net income from ticket sales revenue obtained from District hockey games hosted at the Braemar arena. The revenue due the City shall be paid to the City twice per year. The first invoice will include October – December events and the second January – March events.
- 3.04.1 Adjusted Net Income is determined by the equation Ticket Sales Revenue – (District Costs MINUS \$250.00).
- \$250.00 deduction denotes adjustment for additional gameday costs to the City.

**IN WITNESS WHEREOF** the City and the District have subscribed their names as of the day and year first above written.

**CITY OF EDINA**

By:   
\_\_\_\_\_  
Jesse Buchholz  
Its General Manager – Braemar Arena

**INDEPENDENT SCHOOL DISTRICT  
NO. 273 (EDINA), MINNESOTA**

By: \_\_\_\_\_  
Mert Woodard  
Its CFO/Director, Finance & Operations