

SWIMMING POOL USE AGREEMENT

THIS SWIMMING POOL USE AGREEMENT ("Agreement") has been entered into on the date on which the last signature appears, by and between YMCA of Greater Twin Cities ("YMCA"), a nonprofit corporation organized and existing under the laws of the State of Minnesota and Independent School District No. 832 ("District"), an independent school district organized and operating under the laws of the State of Minnesota.

WHEREAS, the YMCA possesses a competitive swimming pool ("Pool") conforming to relevant Minnesota State Law and Minnesota State High School League ("MSHSL") policies located at the White Bear Area YMCA at 2100 Orchard Lane, White Bear Lake, Minnesota, which is located at the west end of the White Bear Lake Area Schools Aquatic Center at the same address, and which will be hereafter referred to as the "Pool";

WHEREAS, the YMCA has pre-existing partnerships, relationships, and agreements with other organizations relating to the use of its YMCA facility and Pool, including but not limited to Independent School District No. 624, White Bear Lake Area Schools, which leases the Pool for its own high school competitive swimming and diving teams; and

WHEREAS, the District wishes to utilize the Pool to provide water time for practices and swim meets for its girls swim team ("Team");

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

- 1. Use of Pool for Girls Swim Team.** The District shall have the right to use the Pool for practice time and for home and other swim meets for its girls swim team as stated in this Agreement.

- 2a. Practice Times and Scheduling.** Practices will be held in the Pool during each season, the dates of which are determined by the MSHSL. The Team shall be allotted 120 minutes of time in the Pool for practices during each weekday of the season, and 120 minutes of time in the Pool for practices during each Saturday of the season. The team will practice 7:35-9:35 p.m. on weekdays and 6-8 a.m. on Saturdays. Specific practice schedules, including practices taking place before the first day of school and falling on weekdays during which school is not in session, may deviate from this schedule.

During the season, the team shall also have the right to use up to three lanes in either the Pool or the non-competitive (east) pool from 5:00-7:00 a.m. on weekdays, two days per week, with the pool area being determined at the discretion of the YMCA.

- 2b. Swim Meets and Scheduling.** Swim meets will be held in the Pool. During each season, the team may have no more than four (4) home meets. These meets must occur on a day when the White Bear Lake Area High School Girls Swimming and Diving Team has a competitive meet taking place at another location (an away meet). Meets may not be scheduled on any other day of the week. The meet schedule must be negotiated and agreed to unanimously by a representative from the District and the YMCA. During a swim meet, the team shall have exclusive use of the Pool from 3:00 p.m. until 9:30 p.m.

Swim meets in the Pool must begin no later than 6 p.m. The Pool and surrounding areas must be cleared of all District staff, students, and spectators by 9:45 p.m. The Pool closes at 10 p.m., and all District staff, students, and spectators must vacate the building before that time.

Swim meets may include no more than two teams, one of which is the home team.

- 2c. Swim Team Decorations, Displays, and Markings.** All decorations and displays, such as flags, banners, record boards, and items displaying information about the swim team or the high school, will be subject to the approval of the YMCA. Permanent decorations will not be permitted. Decorations may be displayed during District home meets only, provided they are placed and removed during the time of the swim meet itself.

- 3. Pool Rules and Regulations.** The YMCA, in conjunction with the District, shall have the responsibility for drafting rules and regulations for the use of the Pool by students of the District. These rules and regulations shall be posted in appropriate places throughout the Pool. The YMCA shall have the power to enforce these rules and regulations, and in the event of an emergency, YMCA personnel reserve the right to unilaterally direct all people within the Pool according to YMCA protocol. However, if the Pool is being used for District educational, curricular or extracurricular programs, the District shall have the primary responsibility for enforcing and agrees to enforce the rules and regulations for the Pool and agrees to educate the students participating in or observing the programs of the importance and necessity of complying with the rules and regulations.

- 4. Scheduling.** The YMCA and the District shall meet not less than semiannually and upon request of either party to establish schedules for use of the Pool for swim team practices and for swim meets. One consideration for scheduling for the teams will be to accommodate the District's needs in scheduling meets. The parties recognize that the meet schedules are determined in part by conference and MSHSL rules and dictates, and in this case, are specifically linked to the schedule of another high school, namely White Bear Lake Area High School, as described in Section 2b of this Agreement. In the event of a meet cancellation, the YMCA shall use its best efforts to accommodate rescheduling of the meet to meet the needs of the District, the conference and

the MSHSL. The District understands and agrees that its use of the Pool shall be conducted along with the YMCA activities and programs.

- 5. Access by Swim Teams.** The swim teams shall have access to the Pool; a swim team office shared by the District and the YMCA; a swim team storage room shared by the District and the YMCA; and the appropriate locker rooms, rest rooms, spectator seating and other common areas necessary to allow their appropriate and intended use of the Pool. The swim teams shall have access to any and all equipment required or necessary to conduct practices or meets, including, but not limited to, starting blocks, lane markers, starter horns, timing devices and other necessary equipment. District staff and students will not be provided with keys or other means of accessing the Pool outside of normal YMCA operating hours.

All District swim team coaching staff and swim team members will be provided with a Pool access card at the beginning of each season by the YMCA and must present it to YMCA staff upon entering the Pool. The District swim coach will also provide the YMCA with a swim team roster by the end of the first week of the season, including first name, last name, home address, home phone number, email address, emergency contact information, and birth date. The YMCA acknowledges the private nature of student data and agrees to not re-disclose any student data it receives from the District without the express consent of the District. The YMCA reserves the right to refuse access to the Pool to any person attempting to enter the Pool without a Pool access card.

During swim meets, the YMCA will provide access to District staff, students, and spectators without requiring a Pool access card.

OTHER SPACES. The District may use the gathering space adjacent to the main lobby, known as the "Commons," on the evenings of a swim meet from 8:00-10:00 p.m. for post-meet gatherings. The swim teams shall not have access to any other areas of the building for any purpose, including athletic conditioning or training, or group activities, except by prior arrangement with the YMCA, and such activities are subject to additional fees, as determined by the YMCA.

NECESSARY EQUIPMENT. The YMCA will provide the following equipment necessary to conduct swim team practices and swim meets, specified as: bleachers to seat 200 people, chairs, kick boards, pull buoys, lane markers, backstroke flags, diving blocks, a diving board, a starter horn, timing devices, diving scorecards, and lap counters; provided, however, the District is responsible for replacing any such equipment which is lost, stolen or damaged during a District meet or practice. Swim teams may store additional equipment in the shared swim team office at their own risk. The YMCA is not responsible for the upkeep or maintenance of equipment not owned by the YMCA. The YMCA, at its sole discretion, shall have the right to determine whether the District may use the Colorado Timing System, and the YMCA shall have the right to charge training, maintenance, or operating fees related to the District's

use of the Colorado Timing System on an hourly basis as determined by the YMCA for its use.

6. **Pool Environment.** The environmental conditions of the Pool and the entire White Bear Lake Area Schools YMCA Aquatic Center shall be governed by Exhibit A.
7. **Term.** This agreement shall be in effect for two (2) years from August 1, 2018 to July 31, 2020. However, the District shall have the right to terminate this Agreement, in whole, but not in part, effective at the end of any fiscal year of the District, if the School Board of the District fails to appropriate money sufficient for the continued performance of this Agreement by the District after the end of that fiscal year, as evidenced by the passage by the School Board of a resolution specifically prohibiting the District from performing its obligations under this Agreement and from using any monies to pay the rent due under this Agreement in the next succeeding fiscal year and all subsequent fiscal years. The District may effect such termination by giving the YMCA a written notice of termination and by paying to the YMCA any rent and other amounts which are due and which have not been paid at or before the end of its then current fiscal year. Upon termination of this Agreement as provided in this section, the District shall not be responsible for the payment of any rent coming due with respect to succeeding fiscal years. The fiscal year of the District as used in this Agreement shall be the period from July 1 to the following June 30.

This Agreement shall not constitute a general obligation of the District, and the full faith and credit of the District are not pledged to the payment of the rent or the performance by the District of its obligations hereunder. The rent shall be paid, and the other obligations of the District shall be met solely from the amounts appropriated by the School Board for such purpose in the District's annual budget and shall constitute a current expense of the District for the District's fiscal year then in effect. Nothing in this Agreement shall be deemed to obligate the District to budget or appropriate monies or to pay rent due following the end of its then-current fiscal year. This Agreement shall not constitute an indebtedness of the District within the meaning of the Constitution or the laws of the State of Minnesota.

This Agreement shall not terminate and the District's obligation to pay rent and other charges due hereunder shall not terminate until ninety (90) days after written notice that this Agreement is being terminated is provided by the District to the YMCA.

8. **Annual Rent Payment.** By August 1, the District shall pay the YMCA an annual rent payment for use of the Pool and all services to be provided by the YMCA hereunder. The District shall not be obligated to pay any additional expenses of any nature for the operation or maintenance of the Pool, and shall not be obligated to pay salaries, utilities, taxes, or any additional expenses related to the operation, or ownership of the Pool other than the annual rent

payment except as described differently above. The total annual rent payment for the first fiscal year of this Agreement shall be \$20,000 with itemized details described in Exhibit B. The amount of the total annual rent payment shall increase each fiscal year by 2.5%.

9. Operations and Maintenance. The YMCA shall operate and maintain the Pool in a safe and proper manner and in conformance with all Minnesota laws and rules related to public pools. The YMCA shall be responsible for providing safe, clean and sanitary conditions in and about the Pool. The YMCA shall be responsible for all maintenance of the exterior and interior of the Pool, including, but not limited to, landscaping, parking lots, sidewalks, the roof, the pool, the mechanical and electrical components of the Pool, the HVAC system, signs, lighting, and plumbing. The YMCA shall be responsible for any contracts for furnishing electricity, gas, fuel, water, telephones, computer service, window cleaning, snow and ice removal, lawn maintenance, trash or rubbish hauling or any other services the YMCA deems necessary or required to operate and maintain the Pool. The YMCA shall pay or cause to be paid all Pool financing indebtedness, real estate and property taxes, and other ownership and operational expenses for the Pool. The YMCA shall obtain insurance that may be necessary to insure the interests of the YMCA and the District in the operation and use of the Pool and shall maintain property insurance for the full replacement value of the Pool. All operation, maintenance and repair of the Pool shall be at the expense of the YMCA, without further contribution from the District except to the extent of its required annual rent payment. The YMCA shall require criminal history background checks for all employees employed by the YMCA to perform maintenance and operations services for the Pool. The YMCA shall be solely liable for the misconduct of, and the District shall have no obligation or responsibility for, any employees or independent contractors hired by the YMCA to operate, maintain or repair the Pool. The District has reviewed the plans for the Pool and agrees that the Pool as planned including the parking areas are acceptable and appropriate for the District's uses.

10. Indemnity and Insurance.

a. YMCA to District: To the extent permitted by law, the YMCA shall indemnify and defend the District and its employees, agents and contractors, and save them harmless from and against all claims, losses or liabilities arising out of damage to property of, or injury to, any third parties or the District, including the District's employees, agents and contractors, occasioned by or caused in connection with the acts or omissions of the YMCA or the YMCA's employees, agents and contractors. The YMCA shall include the District as an additional insured on any policies of liability insurance carried by the YMCA relating to the Pool. Furthermore, all policies of liability insurance maintained by the YMCA shall contain a waiver of subrogation as to the District and shall be at limits no less than the liability limits of the District's liability insurance. The YMCA shall provide certificates of insurance to the District evidencing all insurance coverages required pursuant to this Agreement on an annual basis.

b. District to YMCA: To the extent permitted by law, the District shall indemnify and defend the YMCA and its employees, agents and contractors and save them harmless from and against all claims, losses or liabilities arising out of damage to property of, or injury to, any third parties or the YMCA, including YMCA employees, agents and contractors, occasioned by or caused in connection with the acts or omissions of the District or the District's employees, agents, students and contractors . The District shall include the YMCA as an additional insured on any policies of liability insurance carried by the District relating to the Pool. All policies of liability insurance maintained by the District shall contain a waiver of subrogation as to the YMCA. The District shall provide certificates of insurance to the YMCA evidencing all insurance coverages required pursuant to this Agreement on an annual basis.

- 15. Nature of Relationship.** Nothing in this Agreement may be construed to create a partnership, joint venture, joint enterprise, agency relationship, or employment relationship between the YMCA and the District. No employee of the YMCA may be considered to be an official, employee, loaned employee, or agent of the District for any purpose, and no employee of the District may be considered to be an official, employee, loaned employee, or agent of the YMCA. Aside from enforcing the terms of this Agreement, the YMCA and the District have no power to legally bind the other.
- 16. Choice of Law, Forum, and Severability.** This Agreement is governed by the laws of the State of Minnesota. By signing this Agreement, the parties irrevocably submit to the jurisdiction of the courts of the State of Minnesota and, to the extent applicable, to the Federal District Court of Minnesota. If a court determines that any provision of this Agreement is unenforceable or in violation of any applicable law, the remaining portions of the Agreement will remain in full force and effect unless the remaining portions would not serve the original purpose of the Agreement. Once signed, a copy of this Agreement has the same legal effect as the original.
- 17. Entire Agreement.** This Agreement represents the full and complete agreement between the parties regarding the subject matter of this Agreement. Neither party has relied on any promise, representation, or inducement that is not stated in this Agreement. This Agreement supersedes any and all prior agreements and representations between the parties. To be valid, any amendments or addendums to this Agreement must be in writing and must be signed by duly authorized representatives for each party.

WHEREFORE, the parties hereto have executed this Agreement on the respective dates set forth below. This Agreement will not take effect until approved by the District's School Board and signed by both parties.

INDEPENDENT SCHOOL DISTRICT NO. 832

YMCA OF THE GREATER TWIN CITIES

By: _____

By: _____

Its: _____

Its: _____

By: _____

Dated: _____

Its: _____

Dated: _____

EXHIBIT A

REGARDING AQUATIC CENTER ENVIRONMENTAL PROTOCOLS

With respect to Mahtomedi Public Schools Competitive Swimming & Diving Activities

Throughout the girls swim season, these protocols will be in effect:

1. The pool temperature will be set not to exceed 85.0 degrees on a daily basis.
2. On the days of swim meets, the pool temperature will be lowered. This will be accomplished by turning off the heating system to the pool itself no earlier than the night before the swim meet. This should lower the pool temperature by at least 1 degree.
3. Air temperature in the Aquatic Center will be set not to exceed 87 degrees on a daily basis.
4. On the days of swim meets, the air temperature will be lowered. The set point will be changed to 80 degrees for the duration of the swim meet. Additionally, the purge fans may be used to increase air circulation during swim meets until external air temperatures drop below 40 degrees.

Mechanical performance and external factors, such as heat, humidity, and cold will influence the conditions inside the aquatic center.

EXHIBIT B

Itemization of Lease Expenses

The following list itemizes the various expenses comprising the \$20,000 lease amount for year 1 of the Agreement.

\$7,674.00	Pool Rental Fee
\$4,664.00	Lifeguard Expense
\$2,500.00	Common Area Use Fee
\$2,112.00	Custodian Expense
\$1,850.00	Administration, Insurance Expense
\$1,200.00	Pool Supplies and Maintenance Expense

Total Amount of above Expenses and Fees: \$20,000