

Facility Use Agreement

This Facility Use Agreement (“Use Agreement”) is made and entered into by and between the **Crowley Independent School District**, an independent school district and political subdivision of the State of Texas (“District”) and the **YMCA of Metropolitan Fort Worth**, (“YMCA”), effective as of the ___ day of May 2022.

I. Recitals

- A. The District and the YMCA have entered into a Construction Lease Agreement contemporaneously (“Construction Lease”) under which the District will construct at its cost a natatorium (“Natatorium”) at the Ryan Family Branch YMCA located at 8250 McCart Avenue, Fort Worth, Texas (“Ryan Branch”) for the joint use of the District and the YMCA.
- B. This Use Agreement sets forth the terms and conditions for the joint use of the Natatorium by the District and the YMCA.
- C. For and in consideration of the covenants, conditions and undertakings hereinafter described, and the benefits to accrue to the District and the YMCA, the parties agree as follows:

II. Agreements

- 1. The term of this Use Agreement shall be seventy-five (75) years (“Term”). The Term will be automatically extended for additional, recurring one-year terms according to the terms and provisions of this Agreement, subject to written modifications agreed to by both parties, unless either Party provides written notice of its intent to exit the Use Agreement within one year of the Termination Date, being seventy-five years after the Natatorium is completed and certified. The Term will begin on the date the City of Fort Worth certifies the completion of the construction of the Natatorium, and the District obtains any other permits or approvals for the use of the Natatorium, at which time the Construction Lease will terminate.
- 2. The District shall have use of the Natatorium for swim team activities, including access, parking and common areas: (i) 6:00 - 7:00 AM and 3:30 - 5:30 PM, Monday through Friday, of each week from September 1st through May 31st of each year, during which times the District must make two (2) lanes available to YMCA members, and (iii) for swim competitions the District may use all eight (8) lanes, the number and dates of competitions to be provided to the YMCA no later than August 25, at the start of the upcoming school term when those events are scheduled to occur (“District Use Rights”). The District and the YMCA will convene during the summer prior to each school year to schedule the District’s use of the Natatorium for the following school year, and the Parties will exercise good faith in pursuing

an agreeable yearly schedule of events suitable to the parties' needs and limitations. The Natatorium will remain open to YMCA members, subject to the District Use Rights.

3. The District shall pay each year: (a) a twenty percent (20%) prorated share of Natatorium expenses related to (i) normal operating expenses, and (ii) the replacement of major capital equipment for the Natatorium, including items such as but not limited to pool pumps, heaters, lane lines, and any HVAC-related equipment; (b) one hundred percent (100%) of the cost for acquiring, maintaining, and replacing equipment, furnishings and other items used exclusively by the District, as needed by the District, as set forth on Exhibit "B" attached hereto; and (c) annual expenses related to six (6) swim meets per season, including two (2) major meets per season and four (4) dual meets per season. The District will utilize the entire pool during these meets, and will pay \$1,300.00 per meet to the YMCA, due thirty (30) days before the scheduled meet is to occur. The District may retain all meet admission fees, merchandise revenue, concessions, etc. The YMCA may determine and charge additional fees only for any extra guards related to the dual meets-depending on the timing of the event and the number of extra guards needed. The first payment will be due and payable upon the beginning of the Term and on or before each anniversary date thereafter based on an accounting provided by the YMCA.
4. The YMCA shall pay each year an eighty percent (80%) prorated share of the Natatorium expenses related to (i) normal operating expenses, and (ii) the replacement of major capital equipment for the Natatorium, including items such as pool pumps, heaters, lane lines, and any other major capital equipment not defined as specific to the District's activities.
5. The District's use of the amenities and improvements shall be limited to the Natatorium and all related appurtenances thereof, and no other part of the Ryan Branch.
6. The District shall not allow or permit the Natatorium to be damaged, and shall repair, or compensate the YMCA for the cost of the repair of all damage to the Natatorium resulting from the unintended use of the Natatorium by the District, but not for reasonable wear and tear.
7. The YMCA and District agree to reasonably cooperate to schedule the use of the Natatorium in a manner, consistent with this Use Agreement, to provide the greatest benefit to the District. It is the intent of the YMCA and the District that the District and YMCA will reasonably coordinate to schedule use of the Natatorium during the summer prior to each school year.
8. During the Term of this Use Agreement the YMCA will operate and maintain the Natatorium consistent with its intended purposes and the terms and provisions of this Use Agreement.
9. In addition to all other rights a party may have available according to law, if a party hereto defaults by failing to substantially perform any provision, term, or condition of this Use Agreement (including without limitation the failure to make a monetary payment when due), the other party may after providing written notice to the defaulting party (i) cure the default, in which case the defaulting party shall reimburse immediately the non-defaulting party its reasonable expenses incurred thereby, or (ii) terminate this Agreement. Any notice shall describe with sufficient detail the nature of the default. The party receiving such notice shall have thirty (30) days from the effective date of such notice to cure the default(s). Where the

resolution of a breach cannot be reasonably achieved within the 30-day grace period, good-faith measures to resolve the breach during that grace period shall toll the non-breaching party's ability to exercise its remedies hereunder, not to exceed ninety (90) days. Unless waived by a party providing notice, the failure to cure the default(s) within such time period, as may be extended under this Agreement, shall result in the automatic termination of this Agreement.

11. Each party to this Agreement represents and warrants that:
 - i. it has full power, authority and legal right to execute and perform this Use Agreement;
 - ii. it has taken all necessary legal and corporate action to authorize the execution and performance of this Use Agreement;
 - iii. this Use Agreement constitutes the final legal, valid, and binding obligations of such party; and
 - iv. it shall act in good faith to give effect to the intent of this Agreement and to take such other action as may be necessary or convenient to consummate the purpose and subject matter of this Agreement.

12. Any notice required or permitted under this Use Agreement must be in writing. Any notice required by this Use Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. The address for notice for each party is set forth below. Any address for notice may be changed by written notice delivered as provided herein.

YMCA: YMCA of Metropolitan of Fort Worth
 Attn: _____
 512 Lamar Street
 Suite 400
 Ft Worth, TX 76102

District: Crowley Independent School District
 Attn: Superintendent of Schools
 512 Peach Street
 Crowley, Texas 76036

13. The YMCA shall have exclusive control, supervision and policy making authority for and with respect to the Natatorium, subject to the District Use Rights.

14. Nothing in this Use Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to either the YMCA or the District nor to create any legal rights or claim on behalf of any third party. Neither the District nor the YMCA waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under

the laws of the State of Texas.

15. This Use Agreement, constitute the entire agreement between the parties as to the subject matter thereof, and shall supersede any and all prior agreements and understandings of the parties hereto with regard to said subject matter, whether oral or written. None of the foregoing documents may be amended or modified except in a duly authorized writing executed by the YMCA and the District.
16. In the event any provision of this Use Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, then to the extent the unenforceability does not destroy the basis of the bargain among the parties, such holding shall not invalidate or render unenforceable any other provision thereof, but rather the affected document will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the parties hereto shall be construed and enforced in accordance therewith. The parties hereto acknowledge that if any provision of this Use Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed to be valid and enforceable.
17. This Use Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.
18. It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately a default or delays in taking any action.

SIGNATURES

The parties have executed and attested this Use Agreement by their officers duly authorized as of the date first written above:

THE BOARD OF TRUSTEES OF THE
FORT CROWLEY INDEPENDENT
SCHOOL DISTRICT

YMCA OF METROPOLITAN
FORT WORTH

By: _____
Mia Hall, Board President

By: _____
Mike Brown, President/CEO

By: _____
Michael McFarland, Superintendent

EXHIBIT “A”
(Natatorium)

EXHIBIT "B"
(District Expenses)

