

Memorandum of Agreement

This Memorandum of Agreement is made on October 28, 2021 by and between YMCA of Metropolitan Fort Worth, 512 Lamar, Fort Worth, Texas, 76102, hereinafter "YMCA FW" and The Crowley Independent School District, 512 Peach St, Crowley, Texas, 76036, hereinafter "CISD", for the development of a Natatorium at 8250 McCart Avenue (the "Natatorium"). The parties hereby bind themselves to undertake a Memorandum of Agreement ("Agreement") under the following terms and conditions:

This Agreement is entered into by both parties in an effort to move forward with the partnership while the final contract is developed by the parties.

GOALS AND OBJECTIVES. The YMCA of Metro Fort Worth (YMCA FW) and the Crowley Independent School District (CISD) wish to enter into an operational memorandum of understanding for the use of a pool constructed by CISD and operated by the YMCA FW. The Parties to this agreement shall abide by the terms of this agreement to achieve the following goals and objectives:

1. **Occupancy and Capital Repairs**
 - a. Annual Occupancy for the pool. YMCA will cover 80% per year for occupancy related expenses (chemicals/water/electric/insurance) 20% per year would cover the school district's designated use of the pool for swim team practice- Monday – Friday from 6:00 – 7:00 am & 3:30 – 5:30 p.m. ("Practice"). The swim team would utilize all lanes except for 2 that would be available for member use during practice. Any "added" time for practice would change the percentage and school district expense. Swim team has the first right of refusal for Swim Meet schedules and Practice schedules, as long as such events are pre-scheduled 4 months prior to their scheduled date.
 - b. Capital Equipment Repairs / Replacement. CISD will pay a 20% prorated share of the expenses related to the replacement of major capital equipment for the indoor pool facility. This includes items such as pool pumps, heaters, lane lines, bleachers, etc. The CISD portion of the capital equipment replacement will be 20% of the expense of the prorated capital items.
2. Annual Expenses related to (6) Swim meets per season. Swim team would hold (2) major meets per season and (4) dual meets per season. CISD will utilize the entire pool during these meets, where CISD will pay \$1,300.00 per meet to the YMCA FW. CISD retains all meet admission fees, merchandise revenue, concessions etc. YMCA FW 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 # of extra guards needed.
3. The term of this Agreement and the final contract to be based on this Agreement is in perpetuity for the building life of the natatorium.

OBLIGATIONS OF THE PARTIES.

YMCA FW shall perform the following obligations:

- A. To provide access (during outlined times in the agreement) to facility, use of parking lots, and common areas of pertinences required to fulfill the CISD needs;
- B. YMCA will sell CISD an amount of land appropriate for the construction of a natatorium for \$1.00 and grant the ability to construct said Natatorium on the Ryan YMCA property located at 8250 McCart Ave.;

- C. YMCA provides the fixtures to the Natatorium – approximately \$70,000 of value in items including lifeguard chairs, agreed upon timing system, scoreboard, bleachers, swim lanes, flags, safety equipment, and more;
- D. YMCA contributes approximately 80% of the regular annual operating expenses;
- E. YMCA will make best effort to accommodate Crowley ISD swim teams at another YMCA facility during construction for similar costs; and
- F. YMCA will provide CISD land elevations for the proposed land.

CISD shall perform the following obligations:

- A. CISD will fund all construction costs, including demolition of existing indoor pool currently located at the Ryan Family YMCA, for the planning, and build of the new natatorium on the property at 8250 McCart Ave.;
- B. CISD will contribute on an annual basis 20% of all costs associated with the Natatorium;
- C. CISD will provide dates and times of all practices and swim meets for each calendar year of this Agreement. CISD will have the first right of refusal for Swim Meet schedules and practice times scheduled 4 full months in advance.

CONFIDENTIALITY. Subject to sub-clause (2) below, each party shall treat as strictly confidential all information received or obtained as a result of entering into or performing this Memorandum of Agreement.

Each party may disclose information which would otherwise be confidential if and to the extent:

- (i) required by the laws of Texas;
- (ii) the information has come into the public domain through no fault of that party; or
- (iii) the other party has given prior written approval to the disclosure, provided that any such information disclosed shall be disclosed only after consultation with and notice to the other party.

RELATION OF THE PARTIES. The nature of relationship between YMCA FW and CISD is that of partners in a partnership.

REPRESENTATIONS AND WARRANTIES. Each party to this Memorandum of Agreement represents and warrants to the other party that it:-

- (a) has full power, authority and legal right to execute and perform this Memorandum of Agreement;
- (b) has taken all necessary legal and corporate action to authorize the execution and performance of this Memorandum of Agreement;
- (c) this Memorandum of Agreement constitutes the legal, valid and binding obligations of such party in accordance with its Minis; and
- (d) 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 Memorandum of Agreement.

TERMINATION. Either party may terminate its performance of related obligations under this MOA if the other party fails to rectify a material breach under a portion of this MOA within one hundred eighty (180) days of receipt by the breaching party of written notice of such breach from the non-breaching party. In such case, the non-breaching Party shall be entitled, without further notice, to cancel that Party's involvement pursuant to the agreement, without prejudice to any claim for damages, breach of contract or otherwise. The parties agree that the failure or termination of any portion or relevant provision of this MOA will not be a basis for terminating other severable obligations or provisions of this MOA, unless the failure or breach is such that the entire MOA loses substantially all of its value to the non-breaching party.

Any termination of this Agreement shall not absolve the Parties from the obligation to observe the confidentiality measures and other restraints as set out herein.

REMEDIES ON DEFAULT. In addition to any and all other rights a party may have available according to law, if a party defaults by failing to substantially perform any provision, term, or condition of this Agreement (including without limitation the failure to make a monetary payment when due), the other party may terminate the Agreement by providing written notice to the defaulting party. This notice shall describe with sufficient detail the nature of the default. The party receiving such notice shall have 180 days from the effective date of such notice to cure the default (s). Unless waived by a party providing notice, the failure to cure the default(s) within such time period shall result in the automatic termination of this Agreement.

FORCE MAJEURE. If performance of this Agreement or any obligation under this Agreement is prevented, restricted, or interfered with by causes beyond either party's reasonable control ("Force Majeure"), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, fire, explosion, vandalism, storm or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to performing with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents, or affiliates.

ARBITRATION. Any controversies or disputes arising out of or relating to this Agreement shall be resolved by binding arbitration in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association to the extent permitted by law. The parties shall select a mutually acceptable arbitrator knowledgeable about the legal issues relating to the subject matter of this Agreement. In the event the parties are unable to agree to such a selection, each party will select an arbitrator and the two arbitrators in turn shall select a third arbitrator, all three of whom shall preside jointly over the matter. The arbitration shall take place at a location that is reasonably centrally located between the parties, or otherwise mutually agreed upon by the parties. All documents, materials, and information in the possession of each party that are in any way relevant to the dispute shall be made available to the other party for review and copying no later than 30 days after the notice of arbitration is served. The arbitrators shall not have the authority to modify any provision of this Agreement or to award punitive damages. The arbitrators shall have the power to issue mandatory orders and restraint orders in connection with the arbitration. The

decision rendered by the arbitrators shall be final and binding on the parties, and judgment may be entered in conformity with the decision in any court having jurisdiction. The agreement to arbitration shall be specifically enforceable under the prevailing arbitration law. During the continuance of any arbitration proceeding, the parties shall continue to perform their respective obligations under this Agreement.

CONFIDENTIALITY. Both parties acknowledge that during the course of this Agreement, each may obtain confidential information regarding the other party's business. Both parties agree to treat all such information and the terms of this Agreement as confidential and to take all reasonable precautions against disclosure of such information to unauthorized third parties during and after the term of this Agreement. Upon request by an owner, all documents relating to the confidential information will be returned to such owner.

NOTICE. Any notice or communication required or permitted under this Agreement shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the addresses listed above or to such other address as one party may have furnished to the other in writing. The notice shall be deemed received when delivered or signed for, or on the third day after mailing if not signed for.

ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties regarding the subject matter of this Agreement, and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

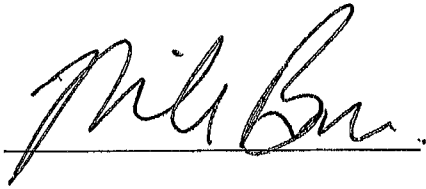
AMENDMENT. This Agreement may be modified or amended if the amendment is made in writing and signed by both parties. The Parties expressly recognize that they intend to form a final contract which will replace this Memorandum of Agreement and list the complete terms with greater specificity.

SEVERABILITY. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

WAIVER OF CONTRACTUAL RIGHTS. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

GOVERNING LAW. This Memorandum of Agreement shall be governed by and construed in accordance with the laws of Texas.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have signed their names below on the above-mentioned date.



Mike Brown President & CEO

YMCA of Metropolitan Fort Worth

Crowley Independent School District