

Special Meeting

Monday, August 13, 2012 6:00 PM

Fridley Community Center, 6085 7th Street NE, Fridley, MN 55432

A. Discussion of City/School District Cooperative Agreements **Presenter:** Dr. Peggy Flathmann

A.1. Fridley Community Center

Agreement.....

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A.2. Hayes

Agreement.....

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AMENDED AND RESTATED FRIDLEY COMMUNITY CENTER COOPERATIVE AGREEMENT

THIS “AMENDED AND RESTATED FRIDLEY COMMUNITY CENTER COOPERATIVE AGREEMENT” (the “FCC Agreement” and as used herein, the “Agreement”) by and between Independent School District No. 14, Fridley, (hereinafter District”) and the City of Fridley (hereinafter “City”) amends that certain “FRIDLEY COMMUNITY CENTER COOPERATIVE AGREEMENT” dated as of September 17, 1996. This renewed Agreement supersedes and replaces the Fridley Community Center Cooperative Agreement and is effective as of July 1, 2012.

RECITALS

A. The District and the City have enjoyed successful collaboration and co-sponsorship of several activities offered to Fridley citizens for many years. The District has made school facilities available to house City programs, with minimal cost to the City. The City has sponsored excellent programs that benefit Fridley youth and adults.

B. Past agreements have been implemented with good faith and reasonable problem solutions. The goal has been to maximize use of City and school facilities to benefit the Fridley community. The District and City renew this more formal agreement in that same spirit of good faith and collaboration.

C. In return for a substantial contribution toward remodeling and new construction at the Fridley Community Center (hereinafter (“FCC”), a District-owned and operated facility, the District and the City have established the following terms and conditions for the City’s use of the facility. The parties intend that the Agreement will be continuous and may be changed to reflect reasonable accommodations to fit future needs.

AGREEMENT

1. DESCRIPTION, DEMISE AND USE OF PREMISES.

1.01. Grant of License. The District, in consideration of the promises and covenants hereinafter stated, and subject to the terms, conditions, and limitations set forth below, hereby grants to the City a license for the rent-free use of the FCC, and all access points and parking necessary and convenient for the use by the City, its employees, invitees and guests (collectively, the "FCC Facility"), subject only to costs for construction, maintenance, and miscellaneous fees as set forth herein.

2. TERM OF THE AGREEMENT.

2.01. Term. The term of this Agreement will be for a period of thirty (30) years, commencing on July 1, 2012, and ending on June 30, 2042 (the "Initial Term", or the "Term"). After the expiration of the initial term, the Agreement will automatically be renewed on a year-by-year basis (each an "Option Term"), unless the District or City terminates the Agreement in writing as provided herein.

2.02 Amendment. The District and City may also, by mutual written agreement provided by their respective boards, amend the Agreement for any period of time prior to the expiration of the Initial Term and any Option Term(s). In the event the District decides to convert the use of the school to house other District activities and to continue to operate the building as a district facility, this Agreement to share space in the FCC Facility will continue, subject to the terms included in this or any subsequent revised agreement.

The term of this Agreement will be for a period of thirty (30) years, beginning on July 1, 2012, and ending on June 30, 2042 (the "Initial Term"). After the expiration of the Initial Term, the Agreement will

automatically be renewed on an annual basis (each an “Additional Term”), unless the District or City terminates the Agreement in writing in accordance with Section 10 of this Agreement.

3. **CONSTRUCTION; IMPROVEMENTS.**

3.01. Alterations, Improvements, Changes and Additions.

- 1) Both the District and the City shall have the right to make improvements to the FCC facilities. The City shall have the right to make improvements and/or additions in areas which the City has priority use under the terms of this Agreement. The District shall have the right to make improvements throughout the remainder of the FCC facility. Both parties shall consult with the other during the planning of these improvements. Plans and specifications for improvements will be subject to the approval or denial by the other party in writing. Approvals, however, shall not be withheld unreasonably.
- 2) To the extent that these improvements impact the operating costs of the other party, these new costs will be shared by the parties in proportion to their use.

3.02. Disposition of Improvements. The FCC Facility and all other structures constructed under the Agreement, and all alterations, improvements, changes or additions made by either party shall be the property of the District during and after the term of the Agreement, and upon any termination of this Agreement, subject only to the requirements of Section 10.

4. **MAINTENANCE, REPAIRS AND DESTRUCTION OF IMPROVEMENTS:**

4.01. Maintenance (see Appendix A). The District will be responsible for routine maintenance and repair of both the interior and exterior of the FCC. However, any damage which occurs during or as a result of any City program or event will be the responsibility of the City.

4.02. Non-Routine Maintenance (see Appendix A). Maintenance that could be characterized as non-routine (e.g. replacement of carpeting, tile, window treatments and built-in cabinetry) and

major capital improvements as defined by the District (e.g. replacement of roof, HVAC systems, security system) will be shared as follows:

- 3) The City will be responsible for non-routine maintenance of class room numbers 105, 107, 109, 112, 114, 116, and the lower level. This includes non-routine maintenance of the elevator.
- 4) The City will be responsible for non-routine maintenance of the east and southeast parking lots.
- 5) The City and the District will share the costs of non-routine maintenance for the gymnasium, kitchen and room 122.
- 6) The District will be responsible for non-routine maintenance for all other portions of the building and grounds.

5. **OPERATING COSTS.**

5.01. Allocation of Costs. The City and District wish to provide for a fair distribution of operating costs for operating the FCC. In general, both parties agree to pay a portion of total operating costs roughly equal to the space they occupy. Operating costs for the FCC will be divided as shown in Appendix A, and as follows:

- A. The District will pay for all other interior and exterior costs associated with the operation of the FCC.
- B. This Agreement will follow the District's fiscal year. The City's portion of the operating costs shall be payable to the District by the 10th day of each month for costs incurred during the preceding month.
- C. Annual adjustments will be identified in March and shall be effective July 1 of the next fiscal year. In no event shall the District's annual adjustments to operating costs exceed the rate of

inflation for the prior year as measured by the Consumer Price Index (Twin Cities). The City agrees that it will work cooperatively with the District to limit operating costs to these established in Sections 5.01 (a) and (C) herein.

6. **USE OF PREMISES.**

6.01. Principal Use. Use of the FCC will be in accordance with the FCC use policy as agreed upon by the Director of Community Education and the Director of Parks and Recreation and be subject to the following priorities and conditions in this Section 6.

6.02. Priorities For Use.

- 1) The City of Fridley shall have first priority on use of room numbers 105, 107, 109, 112, 114, 116, and the lower level, in the FCC; second priority for these rooms would be given to District programs; and third priority would be other activities including, but not limited to, community organizations and authorized groups.
- 2) The District shall have the first priority on use of the remaining classrooms in the existing FCC; second priority would be given to the City of Fridley Parks and Recreation Department; and the third priority would be given to other activities including, but not limited to, community organizations and authorized groups.
- 3) The use of the gymnasium, kitchen facilities and room 122 shall be shared by the City and School District on an equal basis and scheduled cooperatively by City and District personnel. Existing programs using the gymnasium, kitchen facilities and room 122 will be given first priority for their existing use schedules.
- 4) Proposed schedules of events and activities to facilitate joint review of the facility use calendar will be provided by the School District and the City to each other on or before the following dates each calendar year:

- July 1 – for scheduling of facilities in September, October and November
- October 1 – for scheduling of facilities in December, January and February
- January 1 – for scheduling of facilities in March, April and May
- April 1 – for scheduling of facilities in June, July and August

In scheduling, the City may be expected to reserve space in the areas where it has first priority use by community organizations and the general public.

6.03. Failure To Schedule. Failure of the District or City to schedule an event in advance as required in Section 6.02 above will result in that event losing priority scheduling. Said event or events will then be scheduled with a lower priority as space is available. In the case of a conflict in scheduling of events, or if the need to schedule an event arises following the development of the schedule, representatives of the District and City will meet and confer, and use their best efforts to resolve the conflict.

6.04. Scheduling and Changes to Schedule.

- 1) All scheduling of FCC activities shall be handled by District personnel through the use of facility usage permits.
- 2) Once these facility usage permits have been issued, any changes that will affect activities scheduled under the scheduling priority system defined in Section 6.02, must be mutually agreed upon by the City and the District.

6.05. Building Supervision.

- 1) The City shall provide a building supervisor as need requires for City sponsored programs.
- 2) Plans for supervision, including how the duties of supervisors shall be jointly agreed to by the City and the District. Supervisors shall be employees of the hiring party.
- 3) District personnel shall control keys and other means of access to the FCC Facility.

- 4) The District shall provide keys to the City as mutually agreed to for City sponsored events.
- 5) While the District has overall responsibility for cleaning the FCC Facility, the City through its supervisor shall insure that all facilities are restored to the same condition as found at the commencement of their use for a City event.
- 6) The City shall reimburse the District for any additional cleaning or maintenance costs arising out of the use of the FCC Facility for City sponsored events.

6.06. Conditions of Use. All uses of the FCC Facility shall be subject to the following conditions, restrictions and requirements:

- 1) Use of the premises may begin no earlier than 6:00 a.m. on any day. Events will not be scheduled to last past 11:00 p.m. (Monday through Friday) and 12:00 midnight (Saturday/Sunday) unless expressly agreed to in writing by both parties.
 - 2) No smoking or alcoholic beverages will be allowed in the gymnasium or on the premises at any time or in any circumstance.
 - 3) The District's policies regarding weapons will be in effect throughout the FCC Facility and on the FCC property.
 - 4) If requested by either party, District and City agree to develop within thirty (30) days of the request and review from time to time a complete set of rules and regulations for use of the FCC and surrounding property.
 - 5) The City will be responsible for enforcing all applicable rules and regulations during City-sponsored events.
7. INSURANCE. Each party shall provide evidence of the following insurance, or a policy of self-insurance, to the other party.

7.01. Comprehensive General Liability Insurance. The District and City shall both maintain in effect throughout the term of this Agreement, comprehensive general liability insurance, with limits of not less than the amount required by Minnesota Statute § 466, as it may be amended from time to time. Such insurance shall specifically insure against liability arising or potentially arising under this Agreement, or the use of the FCC as well as liability imposed by law, and shall name the non-procuring party as an additional insured.

8. **INDEMNIFICATION.**

8.01 District. Subject to and restricted by the municipal tort liability limits in Minnesota Statutes Chapter 466, as amended, District shall defend, indemnify and hold City or City's elected officials, officers and representatives harmless from any and all claims, liability, loss or damage whatsoever on account of any such loss, injury, death or damage arising out of any negligent act, negligent omission or intentional tort of District or District's elected officials, officers, representatives agents, employees, and contractors.

8.02. City. Subject to and restricted by the municipal tort liability limits in Minnesota Statutes Chapter 466, as amended, the City shall defend, indemnify and hold District or District's elected officials, officers and representatives harmless from any and all claims, liability, loss or damage arising out of any negligent act, negligent omission or intentional tort of City or City's elected officials, officers, representatives agents, employees, and contractors.

8.03. Single Entity. To the full extent permitted by law, this Agreement is intended to be and shall be construed as a "cooperative activity" and it is the intent of the parties that they shall be deemed a "single governmental unit" for the purposes of liability, all as set forth in Minnesota Statutes, Section 471.59, subd. 1a (a), as amended. 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

as amended, or otherwise. Under no circumstances shall either party be required to pay on behalf of itself or the other party, any amounts in excess of the limits of liability established in Minnesota Statutes Chapter 466, as amended applicable to any third party claim. The statutory limits of liability for the parties may not be added together or stacked to increase the maximum amount of liability for any third party claim.

8.04. Cooperation. Each party shall cooperate with the other and its respective insurers to determine the most effective and efficient handling of liability claims arising out of the use of the FCC Facility.

9. **NOTICES.**

9.01. Manner of Notice. All notices, demands, or other writings in the Agreement provided to be given or made or sent, or which may be given, made or sent by either party to the other, shall be deemed to have fully given or made or sent when made in writing and deposited in the United States mail, registered and postage prepared, addressed to the District as follows:

District: Superintendent
Independent School District No. 14, Fridley
6000 West Moore Lake Drive
Fridley, MN 55432-5698

City: City Manager
City of Fridley
6431 University Avenue N.E.
Fridley, MN 55432-5698

9.02. Modification. The address to which any notice, demand or other writing may be given or made or sent to any party as above provided, may be changed by written notice given by such party as above provided.

10. **DEFAULT.**

10.01. Notice of Default. Neither party shall be deemed to be in default under this Agreement unless the other party shall first give written notice of the default, and the default is not cured within sixty (60) days: or, if the default is of such a nature that it cannot be cured within sixty (60) days, the party fails to commence to cure the default within the period of sixty (60) days, or fails thereafter to proceed to the curing of the default with all possible diligence.

10.02. Default; City. In the event of any breach of the Agreement by the City, and after the notice and time periods set forth in Section 10.01, the District, in addition to other rights or remedies it may have, shall have the immediate right to terminate this Agreement without penalty, subject to the requirements of this Section 10 and Section 11, but subject first to the requirements of Section 15.03.

10.03. Default; District. In the event of any breach of the Agreement by the District and after the notice and time periods set forth in Section 10.01, the City, in addition to other rights or remedies it may have, shall have the immediate right to terminate this Agreement without penalty, subject to the requirements of this Section 10 and Section 11, but subject first to the requirements of Section 15.03.

11. **TERMINATION.**

11.01. Termination by District.

- 1) Termination for Cause. The District may terminate this Agreement if it finds the City to be in default, as defined in the Section 10 of this Agreement, in addition to exercising other rights and remedies that may be available to it, subject first to the requirements of Section 15.03. In the event of a Termination for Cause, the City shall not be entitled to reimbursement for its allocated capital contributions.

- 2) Termination Without Cause. The District may terminate the Agreement without cause, including but not limited to a determination by the District that the FCC Facility is needed for District educational purposes, or is surplus or is no longer necessary for the educational program of the District.
- 3) Notice of Termination- Termination Without Cause. In the event that the District or City terminates the Agreement without cause, the terminating party shall provide written notice to the other party subject to the notice requirements of this Section 11.01 3). Termination may occur at any time, but must be preceded by delivery of written notice of termination on or before the first day of April of any year, to be effective on July first of that same year.

Failure to follow the procedures for a notice of termination will invalidate that termination.

11.02. Termination by City

- 1) Termination for Cause. The City may terminate this Agreement if it finds the District to be in default, pursuant to Sections 10 and 11 of this Agreement, in addition to exercising other rights and remedies that might be available to it.
- 2) Termination without Cause. The City may terminate this Agreement for any reason other than cause after providing notice of termination pursuant to Section 11.01. 3).

11.03. Allocation of Capital Contributions; Termination Without Cause. The District and the City agree that as of the date of commencement of the Initial Term, prior capital investments by the City in the FCC Facility have not been amortized. In the event of a Termination Without Cause, the District will reimburse the City for a portion of the fair market value of the FCC Facility based on the proportion of the City's capital contribution(s) to the FCC Facility after September 17, 1996, as compared to the then fair market value of the FCC Facility at the time of termination. In the event the Agreement is

terminated, the parties will mutually select an appraiser to appraise the then fair market value of the FCC Facility. The District shall be responsible for payment of the appraiser's fees.

11.04. Right of First Refusal. After notice of termination and before completing the sale of the FCC Facility to any third party, the District shall give the City an opportunity to purchase the FCC Facility. The City's purchase price will be the appraised value stated in the third party offer for the FCC Facility at the time of the termination, minus an amount equal to the City's proportional capital participation in the FCC Facility, multiplied by the appraised value of the FCC Facility at the time of termination. The City shall have thirty (30) days after the District provides the third party offer to the City to exercise this right of first refusal.

12. **CHANGES IN USE.**

12.01. Current Status. The District declares that it has no present intention to convert any portion of the FCC to be an elementary or secondary school.

12.02. Change in Use. If unforeseen circumstances require that the District in its sole determination to require the use of any and all areas of the FCC Facility for elementary or secondary education, the District may use any and all areas of the FCC Facility, subject to the applicable terms of this Agreement

12.03. Reimbursement of City Costs. To the extent that any currently unanticipated use of the FCC Facility for elementary or secondary education does occur, the District will reimburse the City for reasonable additional costs for rental or leasing of real estate incurred by the City as the result of any displacement, curtailment, or modification of programs, services, or building space, provided by the City in the FCC Facility at the time of displacement, for the remaining balance of the Initial Term, or of any Option Term. If the displacement, curtailment, or modification of programs, services, or building space

exceeds one (1) year, the City may request that the District terminate the Agreement Without Cause and the District shall terminate the Agreement Without Cause. In the event the District must terminate the Agreement Without Cause, City is entitled to reimbursement for its allocated capital contributions pursuant to Section 11.03.

13. **WAIVER.**

13.01. The waiver of District or the failure of District to take action with respect to any term, covenant, or condition contained in the Agreement shall not be deemed to be a waiver of such term, covenant or condition, or subsequent breach of the same, or any other term, covenant or condition contained in this Agreement.

14. **PARTIES BOUND.**

The covenants and conditions contained in this Agreement shall apply to and bind the successors, executors, and administrators of all the parties to the Agreement.

15. **JURISDICTION; CONSTRUCTION OF AGREEMENT; DISPUTE RESOLUTION PROCESS.**

15.01. Jurisdiction. It is agreed that this Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Minnesota.

15.02. Construction of Terms. It is further agreed that both parties have participated in the drafting of this Agreement, by and through their respective legal counsel, and that the rule of construction that ambiguities in such agreements will be construed against the drafter will have not application in any interpretation or construction of this Agreement or the parties' rights and responsibilities hereunder.

15.03 Dispute Resolution Process. In the event of any disagreement or dispute as to the interpretation of any of the provisions of this agreement or the responsibility of the parties with respect to any of its provisions, including those governing Default (§ 10) and Termination (§ 11), the parties agree to make all good faith efforts to resolve those disagreements and disputes amicably. In the event they are unable to resolve any such disagreement or disputes between themselves without benefit of outside intervention or assistance, the parties agree to mediate those disagreements and disputes and, failing resolution by mediation, to submit those disagreements and disputes to binding arbitration. The parties shall equally share the expense of mediation and binding arbitration.

16. **MODIFICATION OF AGREEMENT.**

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidence in a writing signed by each party or an authorized representative of each party.

17. **ADDITIONAL DOCUMENTS.**

The parties agree to execute whatever papers and documents may be necessary to effectuate the terms of this Agreement.

18. **ENTIRE AGREEMENT.**

This Agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

19. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

**INDEPENDENT SCHOOL
DISTRICT NO. 14**

CITY OF FRIDLEY

By: Chris Riddle
Its: Chair

By: Scott J. Lund
Its: Mayor

By: Peggy Flathmann, Ed. D.
Its: Superintendent

By: William W. Burns
Its: City Manager

EXHIBIT A

MAINTAINENCE

OPERATING COST CATEGORIES FOR THE FRIDLEY COMMUNITY CENTER

A. The following operating costs will be divided between the Fridley Community Center and the City of Fridley equal to the space occupied by each organization:

1. Wages and Benefits

Custodian

Custodian Substitutes

Building Monitors

2. Utilities

Water

Electricity

Waste

Natural Gas & Fuel Oil

3. Other Operations

Contracted Service

Telephone

Repair of Equipment

Repair Supplies

General Supplies

Laundry

Fiber Connection to Anoka County

Elevator Phone

Security Alarm

B. The following additional operating costs will be fully paid by the City of Fridley:

1. Additional Telephone/Network

AMENDED AND RESTATED HAYES COOPERATIVE AGREEMENT

THIS “AMENDED AND RESTATED HAYES COOPERATIVE AGREEMENT” (the “Hayes Agreement” and as used herein, the “Agreement”) by and between Independent School District No. 14, Fridley, (hereinafter (District”) and the City of Fridley (hereinafter “City”) amends that certain “HAYES COOPERATIVE AGREEMENT” dated as of July 22, 1996. This renewed Agreement supersedes and replaces the Hayes Cooperative Agreement and is effective as of July 1, 2012.

RECITALS

A. The District and the City have enjoyed successful collaboration and co-sponsorship of several activities offered to Fridley citizens for many years. The District has made school facilities available to house City programs, with minimal cost to the City. The City has sponsored excellent programs that benefit Fridley youth and adults.

B. Past agreements have been implemented with good faith and reasonable problem solutions. The goal has been to maximize use of City and school facilities to benefit the Fridley community. The District and City renew this agreement in that same spirit of good faith and collaboration.

C. It is intended that this Agreement will be continuous and may be changed to reflect reasonable accommodations to fit future needs. Should any unforeseen circumstances substantially change the current situation and programs sponsored by the District, it is anticipated that changes in the Agreement will be negotiated in good faith between the District and the City.

AGREEMENT

1. DESCRIPTION, DEMISE AND USE OF PREMISES.

1.01. Grant of License. The District, in consideration of the promises and covenants hereinafter stated, and subject to the terms, conditions, and limitations set forth below, hereby grants to the City a license for the rent-free use of the Gym Facility located in the Hayes Elementary School, and all access points and parking necessary and convenient for the use by the City, its employees, invitees and guests (collectively, the Gym Facility”) , subject only to costs for construction, maintenance, and miscellaneous fees as set forth herein.

2. TERM OF THE AGREEMENT.

2.01. Term. The term of this Agreement will be for a period of thirty (30) years, commencing on July 1, 2012, and ending on June 30, 2042 (the “Initial Term”, or the “Term”). After the expiration of the initial term, the Agreement will automatically be renewed on a year-by-year basis (each an “Option Term”), unless the District or City terminates the Agreement in writing as provided herein.

2.02 Amendment. The District and City may also, by mutual written agreement provided by their respective boards, amend the agreement for any period of time prior to the expiration of the Initial Term and any Option Term(s). In the event the District decides to convert the use of the school to house other District activities and to continue to operate the building as a district facility, this Agreement to share space in the Gym Facility will continue, subject to the terms included in this or any subsequent revised agreement.

3. CONSTRUCTION; IMPROVEMENTS.

3.01. Alterations, Improvements and Changes Permitted. District shall have the right to make such alterations, improvements and changes to the Gym Facility as the District deems necessary or to replace the Gym Facility in its sole discretion. Prior to proceeding with any alterations, improvements, changes or replacements, District shall provide the City the ability to review and comment on the proposed plans and specifications therefore. The District shall make all reasonable efforts to accommodate the City's comments and objections, but the District shall have final approval. Notwithstanding the foregoing, if the City is making a capital contribution for the improvements, the City shall be allowed to approve such plans and specifications, which approval the City shall not unreasonably withhold.

3.02. Disposition of Improvements. The Gym Facility and all other structures constructed under the Agreement, and all alterations, improvements, changes or additions made by any party shall be the property of the District during and after the term of the Agreement, and upon any termination of this Agreement.

3. MAINTENANCE, REPAIRS AND DESTRUCTION OF IMPROVEMENTS.

4.01. Maintenance. The District will be responsible for routine maintenance and repair of the Gym Facility and surrounding areas. However, any damage beyond normal wear and tear which occurs during or as a result of any City program or event will be the responsibility of the City.

4.02. Snow Removal. The City will be responsible for snow removal on the parking lots and sidewalks on Saturdays and Sundays during City usage. The District will be responsible for weekday snow removal.

4.03. Non-Routine Maintenance. Maintenance that could be characterized as non-routine (e.g. annual flooring surface removal and replacement, and other matters that could be considered

long-term maintenance or emergency or unexpected maintenance) shall be the equal responsibility of the District and the City. The parties will split the cost of such items equally.

4.04. Custodial Maintenance. The District will be responsible for custodial maintenance during weekdays and at other times when it is using the Gym Facility. The Building Supervisor for City activities will be responsible for general cleaning of the Gym Facility and returning the Gym Facility to the same condition as found at the commencement of use.

4.05. Damage to Gym Facility. In case of damage to the Gym Facility or other improvements constructed hereunder which support the public use of the Gym Facility, in which the damage is determined to not be the responsibility of the City based on an agreement of the parties or final determination by an arbitrator or court, the District shall, at its own expense, promptly repair and restore it to a condition as good or better than that which existed prior to the damage or destruction, in the opinion of the District. In the event that the repair or restoration costs exceed the insurance proceeds, the cost attributed to the repair or restoration of the Gym Facility in excess of insurance proceeds will be shared as follows: the City will be responsible for a percentage of the cost based on the proportion of the City's capital contributions to the Gym Facility at the time of construction in 1996. The District shall be responsible for the balance of the repair cost. Such respective contributions shall be considered to be a capital expense by that party.

4. USE OF PREMISES.

5.01. Principal Use. Pursuant to Minn. Stat. §471.19, use of the Gym Facility shall be principally for regular school curriculum and related activities. The use of the Gym Facility for other purposes shall be secondary and subject to the following priorities and conditions in this Section 5.

5.02. Priorities for Use. The priorities of use shall be as follows:

- 1) All Hayes Elementary School regular curriculum and related activities.

- 2) Prior to the beginning of each school year, and each quarter thereafter, the District may designate ten (10) dates annually for special events that occur during the evening and/or weekend. A schedule of these events will be submitted to the City on or before the following dates each calendar year:
 - July 1 – for scheduling of facilities in September, October and November
 - October 1 – for scheduling of facilities in December, January and February
 - January 1 – for scheduling of facilities in March, April and May
 - April 1 – for scheduling of facilities in June, July and August
- 3) All national, state, city and school district elections as necessary.
- 4) City of Fridley (i.e. Parks and Recreation Department) and other directly sponsored and City funded programs. To facilitate joint review of the calendar, schedules of such events will be provided by the City on or before the following dates each calendar year::
 - July 1 – for scheduling of facilities in September, October and November
 - October 1 – for scheduling of facilities in December, January and February
 - January 1 – for scheduling of facilities in March, April and May
 - April 1 – for scheduling of facilities in June, July and August
- 5) Other District activities, including but not limited to community education activities, community organizations, and municipal governmental functions.
- 6) Activities of all other authorized groups as approved by the District.

5.03. Failure to Schedule. Failure of the District or the City to schedule an event in advance as required in Section 5.02 above, will result in that event losing its priority scheduling. Said event or events will then be scheduled under Section 5.02. 5) above as applicable, unless otherwise agreed between the parties. In the case of a conflict in the scheduling of events or if the need to schedule an event arises following the development of the schedules, the Director of

Community Education and the City's Director of Parks and Recreation will meet and confer and use their best efforts to resolve the conflict. If the conflict remains unresolved, the priority for use as written in Section 5.02 above will be in effect.

5.04. Scheduling and Changes to Schedule.

- 1) All scheduling of activities shall be handled by District personnel through the use of facility usage permits.
- 2) Once these facility usage permits have been issued, any changes that will affect activities scheduled under the scheduling priority system defined in Section 5.02 must be agreed upon by the City and the District.

5.05. Building Supervision.

- 1) The City shall provide a building supervisor as need requires for City sponsored programs.
- 2) Plans for supervision, including how the duties of supervisors shall be jointly agreed to by the City and the District. Supervisors shall be employees of the hiring party.
- 3) District personnel shall control keys and other means of access to the Gym Facility.
- 4) The District shall provided keys to the City as mutually agreed to for City sponsored events.
- 5) While the District has overall responsibility for cleaning the Gym Facility, the City through its supervisor shall insure that all facilities are restored to the same condition as found at the commencement of their use for a City event.
- 6) The City shall reimburse the District for any additional cleaning or maintenance costs arising out of the use of the Gym Facility for City sponsored events.

5.06. Conditions of Use. All use of the Gym Facility shall be subject to the following conditions, restrictions and requirements;

- 1) Use of the premises on school days may begin with the dismissal of students from classes.
On Saturdays, Sundays, and holidays, use of the building shall begin no earlier than 7:30

a.m. Events on any day will not be scheduled to last past 11:00 p.m. unless expressly agreed in writing by both parties. It is agreed, however, that sporting events will continue to completion.

- 2) No smoking or alcoholic beverages will be allowed in the Gym Facility or on the premises at any time or in any circumstance.
- 3) The District's policies regarding weapons will be in effect in the Gym Facility and throughout the Hayes Elementary School property.
- 4) If requested by either party, District and City agree to develop within thirty (30) days of the request and review from time to time a complete set of rules and regulations for use of the Gym Facility and surrounding property.
- 5) The City will be responsible for enforcing all applicable rules and regulations during City-sponsored event.

5.07. Activity Room. A small space on the southwest side of the Gym Facility which is accessed from the exterior shall be set aside for the benefit of the City for the purpose of recreation programming (the "Activity Room"). At all times when the City is using the Activity Room, the City will provide a trained supervisor or instructors.

6. **INSURANCE.** Each party shall provide evidence of the following insurance, or a policy of self-insurance, to the other party.

6.01. Comprehensive General Liability Insurance. The District and City shall both maintain in effect throughout the term of this Agreement, comprehensive general liability insurance, with limits of not less than the amount required by Minnesota Statute § 466, as it may be amended from time to time. Such insurance shall specifically insure against liability arising or potentially arising under this Agreement, or the use of the Gym Facility as well as liability imposed by law, and shall name the non-procuring party as an additional insured.

7. **UTILITIES.**

The City shall pay to the District a yearly fee for utilities that is proportionate to their use of the Gym Facility. The fee will be agreed to by the Director of Community Education and the City's Parks and Recreation Director.

8. **INDEMNIFICATION.**

8.01 District. Subject to and restricted by the municipal tort liability limits in Minnesota Statutes Chapter 466, as amended, District shall defend, indemnify and hold City or City's elected officials, officers and representatives harmless from any and all claims, liability, loss or damage whatsoever on account of any such loss, injury, death or damage arising out of any negligent act, negligent omission or intentional tort of District or District's elected officials, officers, representatives agents, employees, and contractors.

8.02. City. Subject to and restricted by the municipal tort liability limits in Minnesota Statutes Chapter 466, as amended, the City shall defend, indemnify and hold District or District's elected officials, officers and representatives harmless from any and all claims, liability, loss or damage arising out of any negligent act, negligent omission or intentional tort of City or City's elected officials, officers, representatives agents, employees, and contractors.

8.03. Single Entity. To the full extent permitted by law, this Agreement is intended to be and shall be construed as a "cooperative activity" and it is the intent of the parties that they shall be deemed a "single governmental unit" for the purposes of liability, all as set forth in Minnesota Statutes, Section 471.59, subd. 1a (a), as amended. 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 as amended, or otherwise. Under no circumstances shall either party be required to pay on behalf of

itself or the other party, any amounts in excess of the limits of liability established in Minnesota Statutes Chapter 466, as amended applicable to any third party claim. The statutory limits of liability for the parties may not be added together or stacked to increase the maximum amount of liability for any third party claim.

8.04. Cooperation. Each party shall cooperate with the other and its respective insurers to determine the most effective and efficient handling of liability claims arising out of the use of the Gym Facility.

9. **NOTICES.**

9.01. Manner of Notice. All notices, demands, or other writings in the Agreement provided to be given or made or sent, or which may be given, made or sent by either party to the other, shall be deemed to have fully given or made or sent when made in writing and deposited in the United States mail, registered and postage prepared, addressed to the District as follows:

District: Superintendent
Independent School District No. 14, Fridley
6000 West Moore Lake Drive
Fridley, MN 55432-5698

City: City Manager
City of Fridley
6431 University Avenue N.E.
Fridley, MN 55432-5698

9.02. Modification. The address to which any notice, demand or other writing may be given or made or sent to any party as above provided, may be changed by written notice given by such party as above provided.

10. **DEFAULT.**

10.01. Notice of Default. Neither party shall be deemed to be in default under this Agreement unless the other party shall first give written notice of the default, and the default is not cured within sixty (60) days: or, if the default is of such a nature that it cannot be cured within sixty (60) days, the party fails to commence to cure the default within the period of sixty (60) days, or fails thereafter to proceed to the curing of the default with all possible diligence.

10.02. Default; City. In the event of any breach of the Agreement by the City, and after the notice and time periods set forth in Section 10.01, the District, in addition to other rights or remedies it may have, shall have the immediate right to terminate this Agreement without penalty, subject to the requirements of this Section 10 and Section 11, but subject first to the requirements of Section 14.03.

10.03. Default; District. In the event of any breach of the Agreement by the District and after the notice and time periods set forth in Section 10.01, the City, in addition to other rights or remedies it may have, shall have the immediate right to terminate this Agreement without penalty, subject to the requirements of this Section 10 and Section 11, but subject first to the requirements of Section 14.03.

11. **TERMINATION.**

11.01. Termination by District.

- 1) Termination for Cause. The District may terminate this Agreement if it finds the City to be in default, as defined in the Section 10 of this Agreement, in addition to exercising other rights and remedies that may be available to it, subject first to the requirements of Section 14.03. In the event of a Termination for Cause, the City shall not be entitled to reimbursement for its allocated capital contributions.
- 2) Termination Without Cause. The District may terminate the Agreement without cause, including but not limited to a determination by the District that the Gym Facility is needed

for District educational purposes, or is surplus or is no longer necessary for the educational program of the District.

- 3) Notice of Termination-Termination Without Cause. In the event that the District or City terminates the Agreement without cause, the terminating party shall provide written notice to the other party subject to the notice requirements of this Section 11.01. 3). Termination may occur at any time, but must be preceded by delivery of written notice of termination on or before the first day of April of any year, to be effective on July first of that same year. Failure to follow the procedures for a notice of termination will invalidate that termination.

11.02. Termination by City

- 1) Termination for Cause. The City may terminate this Agreement if it finds the District to be in default, pursuant to Sections 10 and 11 of this Agreement, in addition to exercising other rights and remedies that might be available to it.
- 2) Termination without Cause. The City may terminate this Agreement for any reason other than cause after providing notice of termination pursuant to Section 11.01. 3).

11.03. Allocation of Capital Contributions; Termination Without Cause. The District and the City agree that as of the date of commencement of the Initial Term, prior capital investments by the City in the Gym Facility have not been amortized. In the event of a Termination Without Cause, the District will reimburse the City for a portion of the fair market value of the Gym Facility based on the proportion of the City's capital contribution(s) to the Gym Facility after September 17, 1996, as compared to the then fair market value of the Gym Facility at the time of termination. In the event the Agreement is terminated after September 17, 1996, the parties will mutually select an appraiser to appraise the then fair market value of the Gym Facility. The District shall be responsible for payment of the appraiser's fees.

12. **WAIVER.**

12.01. The waiver of District or the failure of District to take action with respect to any term, covenant, or condition contained in the Agreement shall not be deemed to be a waiver of such term, covenant or condition, or subsequent breach of the same, or any other term, covenant or condition contained in this Agreement.

13. **PARTIES BOUND.**

The covenants and conditions contained in this Agreement shall apply to and bind the successors, executors, and administrators of all the parties to the Agreement.

14. **JURISDICTION; CONSTRUCTION OF AGREEMENT.**

14.01. Jurisdiction. It is agreed that this Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Minnesota.

14.02. Construction of Terms. It is further agreed that both parties have participated in the drafting of this Agreement, by and through their respective legal counsel, and that the rule of construction that ambiguities in such agreements will be construed against the drafter will have not application in any interpretation or construction of this Agreement or the parties' rights and responsibilities hereunder.

14.03. Dispute Resolution Process. In the event of any disagreement or dispute as to the interpretation of any of the provisions of this agreement or the responsibility of the parties with respect to any of its provisions, including those governing Default (§ 10) and Termination (§ 11), the parties

agree to make all good faith efforts to resolve those disagreements and disputes amicably. In the event they are unable to resolve any such disagreement or disputes between themselves without benefit of outside intervention or assistance, the parties agree to mediate those disagreements and disputes and, failing resolution by mediation, to submit those disagreements and disputes to binding arbitration. The parties shall equally share the expense of mediation and binding arbitration.

15. **MODIFICATION OF AGREEMENT.**

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidence in a writing signed by each party or an authorized representative of each party.

16. **ADDITIONAL DOCUMENTS.**

The parties agree to execute whatever papers and documents may be necessary to effectuate the terms of this Agreement.

17. **ENTIRE AGREEMENT.**

This Agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

18. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

(Signature page for the parties follows)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

INDEPENDENT SCHOOL

CITY OF FRIDLEY

DISTRICT NO. 14

By: Chris Riddle

By: Scott J. Lund

Its: School Board Chair

Its: Mayor

By: Peggy Flathmann, Ed. D.

By: William W. Burns

Its: Superintendent

Its: City Manager