

FACILITY AND PROGRAM AGREEMENT

This **Facility and Program Agreement** (the “**Agreement**”), dated as of 3/1/2023 is made between the **Young Men’s Christian Association of Greater Kansas City** (the “**YMCA**”), a Missouri nonprofit corporation, and **Turner USD 202 School District** (the “**District**”). Said “**parties**” or a “**party**”, intending to be legally bound, and for the mutual benefits and good and sufficient considerations set out below, hereby agree as follows:

RECITALS:

A. Turner USD 202 School District provides educational services for students in Wyandotte, Kansas. The School owns and operates educational facilities which includes four elementary school buildings (the “**Facilities**”), and the YMCA desires to utilize these facilities to deliver summer camp programming (the “**Y-Club Program**”) for district students;

B. The YMCA has provided service to the Kansas City metropolitan community for more than 150 years in the areas of youth development, healthy living and social responsibility and is committed to strengthening the foundations of community by working closely with community leaders, program and member participants, and key partners;

C. To further promote the District and YMCA’s commitment to the area of youth development, the District has agreed to enter into an arrangement pursuant to which the YMCA will provide the Y-Club Program at District Facilities upon the terms and conditions set forth herein;

NOW, THEREFORE, in furtherance of the purposes set forth above, the parties hereto agree As follows:

1. Facility Usage Agreement. The District grants the YMCA the right to use the Facilities pursuant to a program schedule, the current form of which is attached hereto and labeled **Exhibit A**, as it may be reasonably amended as agreed upon by the District and YMCA during the term of this Agreement. **Facility space utilized by the YMCA will include the Cafeteria, Gym/Multi-Purpose Spaces and exterior playgrounds. The cost for facility rental will be \$0 annually.**

2. Scheduling. Representatives of the District and the YMCA shall meet to determine the written schedules for the YMCA’s usage of the Facilities. The agreed upon schedules shall be in writing for the periods beginning March 1st, 2023 and ending July 31st, 2024, Notwithstanding the above, the District shall not be required to operate the facility during

hours different than the normal hours of operation.

3. District Resources. The District will manage and provide ample parking for all participants, parents, community attendees and associates for the YMCA's use of the Facilities pursuant to this Agreement. The District will provide reasonable use of facility communications, including access to landline telephone and wireless internet service.

4. YMCA Resources. The YMCA will provide staff and operational resources, and will provide consumable and reusable resources as-needed to operate the program.

5. Program/Curriculum. Summer Camp will be offered according to the schedule located in Exhibit A. YMCA Program Leaders and staff will deliver the curriculum per the YMCA program. The curriculum will consist of YMCA content delivered through the YMCA Holistic Youth Development Structure.

6. Term and Termination. The term of this Agreement shall commence upon the date of signing and terminate July 31, 2024. The School and the YMCA agree that either party may terminate this Agreement for any reason without penalty or liability by giving 60 days written notice.

7. Restriction on Use; Rules and Regulations. The YMCA shall use the Facilities solely for the purposes of its programs described in Section 1 above and no other purposes. The usage of the Facilities by the YMCA shall be in such a manner so as not to interfere with the District's operation of its business at the District. Each party shall abide by all pertinent state and local statutes, ordinances and regulations.

8. Indemnification. The District shall defend, hold harmless and indemnify the YMCA and its affiliates, officers, employees, agents, and directors, from and against all claims, liabilities, costs, damages, expenses and attorneys' fees arising solely from the alleged negligent acts or omissions or willful misconduct of the District or its employees that occur while the District is fulfilling District duties under this Agreement.

The YMCA shall defend, hold harmless and indemnify the District, its affiliates, officers, employees, agents, directors and patients, from and against all claims, liabilities, costs, damages, expenses and attorneys' fees arising solely from the alleged negligent acts or omissions or willful misconduct of the YMCA or its agents, contractors or employees that occur while the YMCA is fulfilling its duties or the result from its participants use of the Facilities under this Agreement.

Each party agrees to tender the defense of any such claim for which indemnification is sought to the other indemnifying party and agrees to reasonably cooperate fully with the indemnifying party in the defense of the claim. YMCA staff and participants will sign the standard YMCA, and, if applicable, the standard District Guest Waiver forms.

9. Insurance. The YMCA shall maintain at all times during the term hereof general liability insurance with an insurance company or companies qualified to write such insurance in the State of Kansas covering the activities of its employees, with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The YMCA shall also provide Workers Compensation insurance covering all of its employees.

The District shall maintain at all times during the term hereof general liability insurance with an insurance company or companies qualified to write such insurance in the State of Kansas covering the activities of its employees, with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The District shall furnish satisfactory evidence of such insurance coverage to the YMCA upon execution of this Agreement and annually or at other reasonable times upon request.

10. Certificates. Each Party shall provide the other with certificates of coverage evidencing the coverages as set forth in Section 9 above, and payment of the premiums for said coverages. The Certificates provided by the YMCA shall name Turner USD 202 School District under the general liability policy. The Certificates provided by the District shall name the Young Men's Christian Association of Greater Kansas City as additional insureds under the policy. The Certificates or other forms evidencing such insurance shall be provided on or before the beginning of the usage of the District by the YMCA, and on each date the insurance is renewed, or the insurance company or insurance pool is changed. Each Party shall notify the other immediately in writing if any of the insurance policies or pool participations required hereunder are canceled or become ineffective, or if a notice of cancellation or ineffectiveness is received by the Party, unless that Party has arranged for equivalent coverage to commence on or before the date of cancellation or ineffectiveness.

11. Further Actions; Reasonableness and Cooperation by Parties; Time for Certain Actions. Each party agrees to take such further actions and to execute such additional documents or instruments as may be reasonably requested by the other party to carry out the purpose and intent of this Agreement. Except where expressly stated to be in a party's sole discretion, or where it is stated that a party has the ability to act in its sole judgment or for its own uses or purposes, wherever it is provided or contemplated in this Agreement that a party must give its consent or approval to actions or inactions by the other party or a third party in connection with the transactions contemplated hereby, such consent or approval will not be unreasonably withheld or delayed nor will any other determinations

which must be made by a party in the course of performing and administering this Agreement be unreasonably made. The District and the YMCA each also agree to cooperate with and reasonably assist each other in good faith in carrying out the purpose and intent of this Agreement. If no time period is set hereunder for a party to approve or consent to an action or inaction by the other party or a third party such approval shall be given or affirmatively withheld in writing within ten (10) days after it is requested in writing or it shall be deemed given.

12. Default; Cure Rights; Remedies. In the event either party fails to perform any of its obligations under this Agreement for a period of ten (10) days after written notice from the other party describing such failure, without further notice the non-performing party shall be deemed in default hereunder and the other party shall have such rights and remedies as are provided at law and equity generally for the type of default in question, including but not limited to the cancellation of this agreement.

13. Force Majeure. If, by reason of force majeure, either party is unable in whole or in part to carry out its obligations under this Agreement, such party shall not be deemed in default during the continuance of such inability, provided reasonably prompt notice thereof is given to the other party. The term “force majeure” as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; pandemics or other public health events, acts of public enemies or military authority; insurrections, riots, terrorist acts; landslides, earthquakes; fires; storms, drought, floods or other severe weather conditions; explosions; breaks or accident to HVAC, utility lines, machinery, or waste disposal systems; or any other cause or event not reasonably within the control of such party and not resulting from its negligence or intentional wrongful acts or omissions. Provided, however, that this Section shall not be applicable to payments of monies due under this Agreement.

14. Notices. All notices required or desired to be given hereunder shall be in writing, and all such notices and other written documents required or desired to be given hereunder shall be hand delivered, or sent by registered or certified mail, electronic mail or by a recognized overnight delivery service such as Federal Express, as follows:

If to the School:

Turner USD 202 School District
800 S. 55th Street
Kansas City, KS 66106
Attn: Superintendent

If to the YMCA: YMCA of Greater Kansas City
3100 Broadway, Suite 1020
Kansas City, MO 64111
Attn: Chief Financial Officer

Notices shall be deemed duly given upon hand delivery, or upon mailing, first class postage or overnight delivery charge prepaid, addressed as above indicated.

15. General Provisions. This Agreement constitutes the complete understanding between the parties regarding the subject matter hereof, superseding all prior and contemporaneous understandings and agreements between them, oral and written, on the same subject. This Agreement shall be construed in accordance with the laws of the State of Kansas except those pertaining to conflicts of law. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Neither party shall assign its rights or interests under this Agreement without the prior written consent of the other party. Should any part, term or provision of this Agreement be declared illegal or in conflict with any law, rule, or regulation, the validity of the remaining portion, terms, or provisions shall not be affected thereby. The Recitals set forth at the beginning of this Agreement are true and correct and an important part of this Agreement and shall be given full force and effect. The captions at the beginning of Sections are used for convenience only and are not to be used in attempting to construe any part of this Agreement. None of the provisions of this Agreement may be amended without the written consent of both parties. Any waiver by a party of any provision or condition of this Agreement shall not be construed or deemed to be a waiver of any other provision or condition of this Agreement, nor a waiver of a subsequent breach of the same provision or condition, unless such waiver be so expressed in writing and signed by the party to be bound. Each person executing this Agreement in a representative capacity warrants and represents that such person has the authority to do so and will furnish proof of such authority in customary form upon request of the other party. This Agreement may be executed at different times and in any number of originals or counterparts, each of which shall be deemed an original, but all of which together shall constitute only one instrument. In proving or enforcing this Agreement, it shall only be necessary to produce one such counterpart executed by the party against whom enforcement is sought.

16. Electronic Transactions. The parties agree that the transaction described herein may be conducted and this Agreement and related documents (including signatures of parties to this Agreement and related documents) may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the

appropriate court of law.

17. Optional Evidence of Execution. Each party may enter into this Agreement by sending the other party a facsimile (fax) or PDF e-mail copy of its signature hereon with such party, upon request, to provide the other party with an original executed copy of this Agreement as soon as reasonably possible thereafter.

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

Turner USD 202 School District

Signed: _____

Printed: _____

Title: _____

YMCA OF GREATER KANSAS CITY

Signed: _____

Printed: Kelli McClure

Title: Chief Financial Officer

EXHIBIT A
FACILITY PROGRAM SCHEDULE

YMCA Summer Camp Times and Dates:

Monday, June 5th, 2023- Friday, July 14th, 2023

Monday-Friday 7:30 AM-5:30 PM