ORD 191-19
w/ Changes shown
Exh. B

JOINT OPERATING AGREEMENT
FOR
MEDINA RECREATION CENTER

By and Between

Board of Education for Medina City School District

The City of Medina, Ohio

May 30, 2001

Revised Effective January 1, 2020

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Amended Operating Agreement

This **Amended Operating** Agreement is entered into on the ~~9th day of August, 2001~~ **_____ day of _____, _____**, by and between The Board of Education of the Medina City School District and the City of Medina, Ohio. **This ~~modified~~ amended agreement will become effective on the 1st day of January, 2020.**

WHEREAS, the citizens of the Medina City School District have passed a Bond Issue for the construction of major additions to the high school; and

WHEREAS, the City of Medina, Ohio has committed to provide certain funds to supplement the construction of a Recreation Center at the location of the expanded high school; in return for other considerations in this document; and

WHEREAS, the parties to this Agreement desire to share in the use of the Recreation Center; and

WHEREAS, the parties desire to coordinate their efforts and to cooperate in this venture in order to maximize the benefit to the community; and

WHEREAS, the parties desire to memorialize their understanding in writing.

NOW, THEREFOR, in consideration of the mutual covenants and conditions herein contained and for good and valuable consideration, the receipt of which is hereby acknowledged, the parties covenant and agree as follows:

ARTICLE I

Definitions

As used in this Agreement, the following terms have the following meanings unless the context clearly indicates otherwise (terms defined in the singular to have the same meaning when used in the plural and vice versa):

"Advisory Committee" means the group of individuals appointed pursuant to Article IX of this Agreement, organized to make recommendations to the City and the School Board.

"Capital Improvements and Replacement" means the additions, construction, reconstruction, fixtures, ~~equipment~~, flooring, lighting, and such other items which have a life expectancy of five years or more for accounting purposes **with the exception of equipment**.

"Capital Improvement Fund" means the funds created by the School Board and the City for revenues and expenses related to Capital Improvement and Replacement of components of the Recreation Center to be established by the School Board and the City as provided in Article V.

"City" means the City of Medina, Ohio.

"Contract Year" means the fiscal year of the School Board which runs from July 1 to June 30 each year.

"Courts" mean the four courts located in the field house to be used for basketball, volleyball, badminton, tennis, and other general recreational use.

"Director" means the person selected by the School Board and the person selected by the City, which individuals shall have the primary day-to-day authority regarding their respective party's activities at the Recreation Center.

"GAAP" means the generally accepted accounting principles consistently applied.

"Member" of the Recreation Center means any person who has arranged with the City, through membership purchase or otherwise, to have the privilege of using the Recreation Center facilities under the Supervision of the City.

"Operating Expenses of the Physical Plant" means all expenses relating to utilities, custodial service, maintenance, repairs of items with a useful life of less than 5 years, snow and ice removal, and landscape maintenance incurred at or about and relating to the Recreation Center, including labor, materials, supplies and independent contractors.

"Pools" means the "competitive pool" and the "recreation pool" located at the Recreation Center.

"Priority Use" means that when schedules are being developed, the party with priority use for a given area in the Recreation Center for a given time on a given day shall have the first opportunity to schedule an activity. Should that party not choose to schedule an activity, then the other party is free to schedule an activity for that area at that time and day.

"Programming Expense" means all expenses directly related to particular programs run by each party, such as Supervision expenses, program supplies, personnel expenses for organizing the program, advertising about the programs, and maintenance or custodial services above and beyond usual day-to-day use of the Recreation Center.

"Recreation Center" means a facility of approximately 106,000 square feet (first and second floor) owned by the School Board, and

leased to the City, having a track, four courts, two pools, and various other rooms attached as a part of the high school.

"School Board" means the Board of Education of the Medina City School District, which is constituted and organized as required by the statutes of the State of Ohio.

"School Year" means the term that the high school is in session as determined by this School Board and state law.

"Student Day" means that portion of the regularly scheduled high school day when attendance by the student body is required.

"Supervision" means the obligation to have on-site an adequate number of trained individuals to oversee properly the activities occurring in the Recreation Center.

"Track" means the indoor track located within the Recreation Center.

"Weight Room" means that room located in the Recreation Center containing weight training and exercise equipment.

ARTICLE II

Descriptions of the Parties and Facilities

2.1 Facilities. The facilities consist of the Recreation Center, containing a Track, Courts, two Pools, Weight Room, physical therapy room, aerobics room, locker rooms, offices, storage, and all other support areas contained within the defined structure.

2.2 Parties. The parties to this Agreement are the School Board and the city.

ARTICLE III

Principles of Use

3.1 Public Funding. The parties acknowledge that the Recreation Center is made possible due to public funding from residents of the Medina City and the Medina City School District community. The parties mutually covenant that the Recreation Center shall comply with the purposes, clauses, and tax rules for any related tax-exempt bonds.

3.2 Ownership by the School Board. The Recreation Center is owned by the School Board.

3.3 Leasehold Interest by City. In consideration of its providing funds to the construction of the Recreation Center, the City shall be granted a leasehold interest in and to the Recreation Center premises for a term of 50 years commencing on the date the facilities are opened for public use and terminating on June 30, of the fiftieth year thereafter, unless renewed as stated in Article VI herein. The Parties agree to execute a lease agreement setting forth the terms & conditions of the leasehold interest, consistent with the intent of this joint operating agreement.

The original lease ~~shall~~ required **the following** ~~an~~ initial prepayments of rent in the amount of seven million, five hundred thousand dollars ($7,500,000). Payments ~~will be~~ **were** made on the following schedule:

$1,000,000	immediately, upon signing this agreement
$780,000	when foundation completed
$1,000,000	when steel erected
$2,055,000	when shell completed
$1,000,000	when interior roughed in

$1,665,000 when interior completed, occupancy permit is issued.

The parties acknowledge that the School Board will apply such rent to its land acquisition and construction costs for the Recreation Center.

Except for such rent payments to be so applied and any change orders pre-authorized by the City, the City shall have no obligation or liability for any construction costs, including overruns, all of which shall be the responsibility of the School Board, as owner of the premises.

During construction, the School Board agrees not to execute any change orders that would have impact on City programming at the Recreation Center without written consent of the City, which consent must not be unreasonably withheld.

The City agrees not to request unilaterally any further change to the construction plans as they currently stand without accepting financial responsibility for the consequences of such change.

The lease shall also require the City to pay as additional rent annually the amounts specified in Article V for the Operating Expenses of the Physical Plant and the Capital Improvements Fund for the Recreation Center.

This lease shall grant the City an indefinite number of five year renewals to the original term of the lease, with the rent during the renewal period to be One Dollar per year plus the amounts to be required for the Operating Expenses of the Physical Plant and the Capital Improvements Fund.

ARTICLE IV

Priority of Use

For program planning purposes, each party shall have certain times of the year during which they shall have priority use for certain areas of the Recreation Center. ~~The initial priority schedule is attached as Appendix A.~~

This will be reviewed annually by the Advisory Committee and revised as needed. As the Operating Expenses initially will be shared approximately equally, the parties agree each has the right to approximately half of the available time/space for priority use.

However, it is expected that the City will probably program more time/space than the School Board.

Furthermore, it is expected that most time/space that is not specifically scheduled by either party will probably be made available for unscheduled use by Recreation Center Members under Supervision by the City.

It is intended that the parties will schedule their program use prior to the start of each Contract Year in accordance with the principles of Article IV and policies and procedures to be recommended by the Advisory Committee, and be bound by those scheduling commitments as provided in Article V. In the event one party allows the other party to schedule programs during the first party's time/space of Priority Use, this does not change the first party's Priority Use for the future unless the Advisory Committee revises the Priority Use schedule during their next scheduled review.

4.1 Priority Use. Each party shall have priority use of the designated areas in Appendix A.

4.2 Shared Use. City has priority use of all areas of the facility when neither the school nor the city has anything scheduled. There will be times that programming will require shared usage of the same area (ex: Fitness center). ~~Appendix A is used as the guideline.~~ The city will retain use of two of the lap lanes of the competitive pool when school physical education classes are in session.

4.3 Recreation Pool and Track. It is the intent of the parties that the Recreation Pool and Track remain open to Members for general use as many hours as possible.

4.4 Food Service. Food service within the Recreation Center will be the responsibility of and Supervised by the City. This can be modified by written agreement between the parties.

ARTICLE V

Scheduling and Funding

5.1 Scheduling. The Directors shall meet, agree on the Priority Use, and deliver a signed Priority Use schedule to the Advisory Committee by January 1 prior to any given Contract Year.~~, except that the initial year of the Priority Use scheduling is attached as Appendix A.~~ The signature of the two Directors on a Priority Use schedule for a given Contract Year shall signify such agreement.

During any Contract Year where such Priority Use scheduling agreement did not occur by the established deadline, the Priority

Use scheduling for that Contract Year reverts to the prior year's Priority Use Schedule.

During the year, each Director will use the Priority Use schedule to develop a calendar of programming that is definitely planned for the coming months. A copy of the current actual scheduled use calendar will be constantly displayed in the Recreation Center at a location readily available to both Directors.

During the year, any changes to this schedule will be initialed by the Director of the party having Priority Use for that time/space. An alternative system may be employed provided it meets the same criteria for availability and control of the schedule.

5.2 Funding. The agreement of the parties to a Contract Year scheduling calendar also signifies their agreement to the funding obligation associated with the time schedule.

5.3 Fees to be Paid to Parties. Each party to this Agreement shall be free to establish and collect fees for scheduled use sponsored and supervised by that party during such party's scheduled time.

5.4 Operating Expenses of the Physical Plant. The parties agree ~~that initially~~ the School Board will be liable for ~~52.5~~ **50**% of the Operating Expenses and ~~that~~ the City will be liable for ~~47.5~~ **50**% of the Operating Expenses. ~~This 5% difference is to compensate for possible inefficiencies of the Physical Plant.~~ The sharing of Operating Expenses may be adjusted by written agreement of the two parties.

The utilities portion of the Operating Expenses for the Recreation Center will be separately metered, where feasible, and otherwise prorated as accurately as feasible.

The School Board shall pay from its general account all of the Operating Expenses of the Physical Plant as incurred. The School District shall then invoice the City for its allocable share on or before the 10th day of the next month, to be paid by the City within 20 days after receipt of the invoice.

5.5 Day-to-day Operations. In order to have one channel for scheduling activities, programming and usage, all questions and concerns relating to the day-to-day scheduling will be directed to the City's Director. The City retains the right to hire, at its expense, part-time employees for programming assistance.

In order to have one channel for School scheduling activities, all questions and concerns related to day-to-day scheduling will be directed to the School's Athletic Director.

In order to have one channel of communication for School Operations and Facility related issues will be directed to the Director of Business Affairs.

5.6 Capital Improvements Fund. The parties recognize the Recreation Center will need future capital spending to maintain the structure, and the value of providing funds for such future needs.

Both parties shall establish and maintain a Capital Improvement Fund for the capital improvement and repair of the Recreation Center.

The Capital Improvement fund shall be maintained separate and apart from the other funds maintained by the School Board and the City.

A Capital Improvement Budget will be recommended by the Advisory Committee before the beginning of each Contract Year and approved by each party.

Withdrawals from each party's funds shall be made within the approved budget (or in an emergency with the approval of the Advisory Committee President or designee).

Quarterly reports of the Capital Improvement Fund should be forwarded by the school to the city and the city to the school with copies from both entities to the Advisory Committee showing scheduled deposits and expenditure history.

Initially, the parties estimate the total capital replacement and repair costs for each Contract Year to be $200,000 ($100,000 per party allocated to each party's fund).

The parties may from time to time by mutual written agreement change this estimated amount. **The Board and the City will consider increasing this amount if the expenses exceed the current balance.** Each party shall pay into its Capital Improvement Fund on or before July 31 of each Contract Year one-half of the total amount agreed upon for that Contract Year.

However, in the first two Contract Years of this agreement, neither party will be required to pay any of its allocable share; in the third year, each party shall pay 30% of its allocable share; in the fourth year 60%; and in the fifth year 90%.

Thereafter, each party shall pay 100% of its allocable share.

5.7 Sponsorship Rights. The parties agree that there are three (3) categories of "naming rights" with regard to the recreation center.

1. Exterior of the recreation center
2. Interior rooms of the recreation center
3. Mutually exclusive programs

The procedure for sponsorship rights should be that a request for proposals for categories 1 and 2 will be presented to the Advisory Committee then to the city/schools to be mutually agreed upon, then to the Board of Education/City Council for their final approval.

It is anticipated that further revenue will be generated by sponsorship rights in association with the Recreation Center.

The parties agreed that any revenue so generated will be distributed as follows:

100% into the Joint Capital Improvement Fund

Whichever party secures the sponsor/donor for sponsorship rights of mutually exclusive programs would retain 100% of the benefits of such proposals.

Each party must notify the Advisory Committee and the other entity that they are accepting proposals to be sure that conflicts are eliminated. **The Advisory Committee will review sponsorship rights at least every three (3) years; this will also include the Sponsorship Agreement (if one exists) (See Appendix A) when it is due for renewal.**

5.8 Programming Expenses. Each party to this Agreement shall be responsible for its own Programming Expenses, including the Supervision of its sponsored activities at the Recreation Center.

The School Board may contract with the City for a separate fee to provide Supervision services (e. g., lifeguards) for the School Board at certain functions or scheduled times.

Further, the City may contract with the School Board for a separate fee for the School Board to provide extra maintenance or custodial services at certain functions or scheduled times.

ARTICLE VI

Term and Termination

6.1 Term of Agreement. The initial term of this Agreement shall commence on the date the facilities are opened for public use and end on June 30, 2052. Subject to the termination provisions below, the Agreement shall automatically renew thereafter for an indefinite number of additional five-year terms commencing July 1, and ending June 30 of the fifth renewal year.

The forgoing renewal provisions notwithstanding, at least three years prior to the end of the initial term or any subsequent renewal term, either party may terminate this Agreement by giving written notice to the other party of its intention to terminate, in which event this Agreement shall terminate as to the notifying party at the expiration of the term or renewal term then in effect.

This agreement will be reviewed every three (3) years. This review may be waived by written consent of both parties.

6.2 Termination by Mutual Consent. This agreement may be terminated prior to the expiration of its term by written consent of both parties.

6.3 Default.

(a) In the event of a material default by either party in the performance of its obligations under this Agreement, the non-defaulting party shall deliver to the other party written notice setting forth the nature of the default.

The defaulting party shall have thirty (30) days to cure the default if the default involves a direct payment of money and ninety (90) days to cure the default if the default does not involve a direct payment of money, provided that in the event of any such non-monetary default the cure period shall be extended for such additional period of time as shall be necessary for the defaulting party, using its best efforts and with due diligence, to cure the default promptly.

(b) If the default is not cured within such time limits, the defaulting party shall provide written notice of the nature of the default to the Advisory Committee, which shall have ninety (90) days thereafter to resolve the default to the satisfaction of both parties.

If the default shall not be resolved to the satisfaction of both parties within such ninety (90) day period or within any extension agreed to by the parties, then either party may request in writing that the dispute be determined by court sanctioned mediation and/or arbitration as provided below.

(c) Any claim or controversy between the parties regarding their respective rights, duties or obligations hereunder shall be settled by means of alternative dispute resolution conducted in accordance with the then existing rules of the Medina County Common Pleas Court.

Should arbitration be required, such arbitration shall be before three disinterested arbitrators, one named by the School District, one by the City, and one by the two thus chosen.

In the event the selected arbitrators cannot agree on a third arbitrator, the Court shall appoint the third arbitrator.

The arbitrators may not order termination of the Agreement unless a serious, material default occurs and there appears no viable remedy short of termination.

The arbitrators shall, absent extraordinary circumstances, award monetary compensation to the City based on a pro-rata calculation of prepaid rent less any reduction for unpaid City obligations or plus any increase for unpaid School District obligations, and for the arbitrators' award of damages to either party, if any.

The arbitrators shall have no power to depart from or change any of the provisions of this agreement.

The parties shall bear equally the expense of arbitration proceedings conducted hereunder, unless the arbitrators shall unanimously determine otherwise.

Judgment upon the arbitrators' award rendered may be entered in the Medina County Common Pleas Court pursuant to Rev. Code Chapter 2711.

(d) In the event of termination, the defaulting party shall have no further rights or obligations under this agreement after the date of termination; however, the defaulting party shall not be relieved of its obligations under this Agreement which accrued prior to the date of termination.

Notwithstanding anything to the contrary in this agreement, under no circumstances shall the School District or the City be deprived of the use of the Recreation Center to the extent such use is essential to the educational programming of the School District or to the recreational programming of the City.

ARTICLE VII

Alterations and Improvements, Utilities and Maintenance

7.1 Alterations and Improvement. Either party or both parties jointly may request alterations or improvements, subject to the other party's prior written consent; with the requesting party to pay for the alterations or improvements subject to mutual agreement otherwise.

7.2 Utilities and Maintenance. The School Board shall provide all utilities, maintenance, repairs and custodial services, and the cost thereof shall be a factor in determining the Operating Expenses of the Physical Plant pursuant to Section 5.4.

Where either party sponsors programs causing a need for maintenance above the peak daily norm, the sponsoring party may be assessed an additional fee to cover the extra costs.

~~Initially the~~ School Board shall provide the following custodial personnel seven days per week:

~~1 full time person from 7:00am – 3:30pm~~

~~1 full time person from 3:00pm – 11:30pm~~

~~2 full time people from 11:00pm – 6:00am~~

16 hours total per day

2 people 6 hours per day (11:00 pm - 6:00 am)

2 hours of flex time - example spill clean up

1 hour in the morning (7:00 am - 8:00 am)

1 hour to review books for the night shift (3:00 pm - 4:00 pm)

In addition, shutdown (when the recreation center is closed for annual cleaning/maintenance) will be billed at the mid-step of the negotiated agreement based on actual hours worked.

It is expected that the number of custodial personnel will be adjusted according to the needs of the Recreation Center.

~~The City will be involved in the interview process when full time positions are filled.~~ Custodial costs will be included per section 5.4 "Operating Expenses" and allocated as designated.

The hourly rate used to calculate custodial time shall be charged at the mid-step of the Medina City Schools wage scale or in the event there is no mid step the top step of the first half of the wage scale.

The custodial staff assigned to the recreation center will meet with the City's Director of the recreation center periodically as needed to facilitate smooth operations.

The school district administrator (Building and Grounds Supervisor or successor titles) shall be the key contact for the city with regard to concerns regarding cleaning or maintenance.

~~The parties both acknowledge that a higher level of cleaning is expected in this facility compared to current School and City buildings.~~

~~The initial expectations for cleaning are contained in Appendix B.~~

In the event the city feels the schools are not ~~meeting this standard,~~**adequately cleaning and maintaining the facility,** they shall notify the Advisory Committee and School **Director of Business Affairs** in writing.

The School Board in cooperation with the Advisory Committee shall have 30 days to remedy this deficiency.

If the deficiency cannot be remedied the City, at its expense, may arrange other custodial services, until such time as the Board of Education can provide adequate services.

Maintenance expenses will be billed labor and materials and included per section 5.4. Any maintenance performed will be approved by the City's Director and the School Board's maintenance supervisor, or one of his superiors.

This excludes items that are part of the capital improvements budget, which will be handled per section 5.6.

This agreement does not preclude the City from hiring service contracts for specialized equipment repair. The cost of such contracts shall be considered a part of operational expense of the physical plant when mutual intent is used.

ARTICLE VIII

Insurance

8.1 Insurance on the Recreation Center. The School Board shall be obligated to maintain and keep in full force and effect during the original or any extended term of this Agreement fire and extended coverage insurance on the Recreation Center in an amount equal to the full replacement cost thereof.

In the event the insurance company determines that there has been damage or destruction of the Recreation Center constituting a total loss, the School Board at its option shall either (i) repair or replace the Recreation Center to its original or better condition in order to continue to provide the uses of the Recreation Center prior to such damage or destruction; or (ii) treat the insurance proceeds and all monies in the Capital Improvement Fund as Distributable Excess to be distributed to the parties as follows:

a) The City shall receive the sum of $7.5 million dollars reduced by $150,000 for every twelve month period completed of the original term prior to the loss; and
b) The School Board shall receive the balance of the Distributable Excess.

In the event that there is partial damage or destruction of the Recreation Center constituting less than a total loss, the School Board shall use the proceeds toward restoring the Recreation Center to its pre-damaged condition, unless the parties mutually agree otherwise.

8.2 Liability Insurance. Each party to this Agreement shall maintain and keep in full force and effect liability insurance in limits of not less than $5,000,000.

8.3 Equipment Insurance. Each party will be responsible for insuring its own equipment located in the Recreation Center.

8.4 Waiver of Subrogation. The School Board and City release each other and their respective principals, employees, representatives, and agents from any claims for damage to any person or to the

Recreation Center or the Recreation Center facilities caused by, or that result from, risks injured against under any insurance policies carried by the parties and in force at the time of any such damage.

The School Board and City shall cause each insurance policy obtained by them to provide that the insurance company waives all right of recovery by way of subrogation against the other in connection with any damage covered by any policy.

Neither School Board nor City shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policies required by this Article VIII.

ARTICLE IX

Advisory Committee; Directors

9.1 Composition. An Advisory Committee with the following seven members shall be established.

Each member of the Committee shall possess one vote in making all recommendations by the Advisory Committee provided for in this Agreement.

The members of the Committee shall be:

a) The School Board shall select two members;
b) The City shall select two members; and
c) The four members of the committee so selected shall select by majority vote, three more members, ~~at least one of whom must be a City resident,~~ all of whom must be City or School District residents, and one of whom shall be elected chair person.
d) Each party is entitled to appoint, from time to time, non-voting ex-officio members, for purposes of providing additional expertise, who are to be included in any deliberations of the committee, so long as such members do not disrupt the normal business of the committee.

e) A quorum for conducting business shall consist of at least four of these members, provided that at least one member selected by the City is present and at least one member selected by the School Board is present.

9.2 Terms of Office. Members shall serve for a term of three (3) years commencing on January 1 next following the date of their respective appointment.

One school member initially will serve a three (3) year term and one school member will initially serve a two (2) year term and following the appointments made for the terms commencing January 2020, all committee members will serve three (3) year terms.

One city member initially will serve a three (3) year term and one city member will initially serve a two (2) year term and following the appointments made for the terms commencing January 2020, all committee members will serve three (3) year terms.

In the event of a vacancy on the committee, a successor member shall be appointed by the body which made the original appointment to serve the remainder of the term of the vacant seat.

There shall be no limit on the number of terms a member may be appointed to serve.

9.3 Role of Advisory Committee. The Advisory Committee shall serve in an advisory capacity to help resolve all questions between the parties arising under this Agreement, including, but not limited to, matters regarding scheduling use of the Recreation Center, Operating Expenses of the Physical Plant, Capital Improvement Fund questions, and day-to-day Operations questions.

The Advisory Committee shall reach its decisions by majority vote of the full committee and shall adopt such rules and

procedures as it deems necessary and appropriate to perform its duties under this Agreement.

The Advisory Committee shall make recommendations to the School Board and the City, subject to the right of the School Board or the City to resolve any dispute in a court of competent jurisdiction, if necessary.

9.4 Directors. The City shall designate one person to serve as its Director of the City's activities at the Recreation Center, which person shall have overall responsibility for the City's activities there, as well as serving as the one channel for scheduling issues, subject always to the terms and conditions of this Agreement, the policies of the Advisory Committee, and the control of the City and its administrative officers.

Initially the City designates its Director of Parks and Recreation to hold such position.

Likewise, the School Board shall designate one person to serve as its Director of the School Board's activities at the Recreation Center, which person shall overall responsibility for the School Board's activities there, subject always to the terms and conditions of this Agreement, the policies of the Advisory Committee, and the control of the School Board and its administrative officers.

Initially, the School designates the Athletic Director to hold such position.

In the event of any dispute regarding the use and operation of the Recreation Center, the two Directors shall meet to attempt to resolve the dispute. Should they be unable to reach resolution, they shall refer the dispute to the Advisory Committee, which shall consider such dispute at its next regular meeting, or if necessary, at a special meeting called by any three of its members.

The Advisory Committee shall present its recommendations to resolve the dispute to the Directors, subject to the right of the School

Board or the City to resolve any disputes in a court of competent jurisdiction, if necessary.

In all such informal dispute resolution, the Directors, Advisory Committee, City and School Board shall be governed by the terms and conditions of this Agreement, and the best interests of the community.

Article X

Joint Obligations, Representations and Warranties

10.1 Mutual Assistance. The parties shall reasonably cooperate with each other and shall at their own cost and expense provide reasonable assistance to each other to aid the other parties in fulfilling their obligations under this Agreement.

10.2 Authority. The parties have taken all required action as to approve and adopt this Agreement.

This Agreement is a duly authorized, valid and binding Agreement of the parties, enforceable against them in accordance with its terms. Further, the representatives signing this Agreement have the requisite authority to do so.

10.3 Absence of Conflicts. The execution and delivery of this Agreement by the parties:

(a) Does not and will not violate or conflict with any statute, regulation, judgment, order, writ, decree, or injunction applicable to them;

(b) Will not violate or conflict with any charter provision or by-law of the parties, or any existing mortgage, indenture, contract, licensing agreement, or other agreements binding on the parties.

10.4 Absence of Required Consents or Contractual Restrictions. No consent or approval which has not been

obtained is required to be obtained in connection with the execution and delivery of this Agreement or the performance of the transactions contemplated hereby.

No contract or agreement by which the parties are bound will restrict their ability to fulfill their obligations and responsibilities under this Agreement or any related agreement or to carry out the activities contemplated herein.

10.5 Non-performance. In the event that either party is not satisfactorily performing a service specified in this contract, due to unforeseen situations, and as determined by a majority of the Advisory Committee, then the other party has the ability to contract out for that service.

ARTICLE XI

General Rules of Use

The Advisory Committee shall recommend to the School Board and the City General Rules of Use for the Recreation Center.

ARTICLE XII

Miscellaneous

12.1 Further Assurances. The parties hereto, and each of them, agree at this time and from time to time, to execute any and all documents reasonably requested by the other to carry out the intent of this Agreement.

12.2 Captions. The captions of this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any other provisions hereof.

12.3 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

12.4 No Partnership. Nothing contained in this Agreement or any of the documents to be executed pursuant hereto shall be interpreted to be a partnership or any other arrangement whereby one of the parties is authorized to act as an agent for another.

12.5 Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties hereto, and no other person, persons, entity or entities shall have any right of action hereon, right to claim any right or benefit from the terms contained herein, or be deemed to be a third party beneficiary hereunder.

12.6 Governing Law. The governing law of the validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Ohio.

12.7 No Assignment. Neither party to this Agreement may assign, transfer or otherwise convey any or all of its rights or obligations hereunder without the prior written consent of the other party.

12.8 Entire Agreement; Amendment. This Agreement with the annexed exhibits sets forth the entire understanding between the parties relating to the subject matter contained herein and merges all prior discussions between them.

No amendment to this Agreement shall be effective unless it is in writing and executed by the parties hereto.

12.9 Severability. If any one or more of the provisions contained in this Agreement or in any document executed in connection herewith (other than provisions constituting a material

consideration to a party's entering into this Agreement or such other document) shall be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired; provided, however, that in such case the parties shall use their best efforts to achieve the purpose of the invalid provision.

12.10 Notices. All notices, certificates, requests, demands, and other communications hereunder shall be in writing and shall be personally served or sent by certified mail. All such notices, certificates, requests, demands and other communications shall be delivered to the party to receive same at the addresses indicated below (or at such other address (es) as a party may specify in a written notice):

To: Medina City School District	**To**: The City of Medina
~~120 W. Washington Street~~	132 N. Elmwood Street
739 Weymouth Road	
Medina, Ohio 44256	Medina, Ohio 44256
Attention: Superintendent and **Director of Business Affairs**	Attention: Mayor and Clerk of Council

12.11 Schedules. The schedules hereto are an integral part of this Agreement and all references herein to this Agreement shall encompass such schedules.

12.12 Waiver. No failure on the part of a party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy by a party preclude

any other or further exercise thereof or the exercise of any other right, power or remedy.

12.13 No Construction against Drafter. This Agreement has been drafted and negotiated by both parties and shall be interpreted to give it fair meaning, and any ambiguity shall not be construed for or against any party.

12.14 Multiple Originals. The parties shall sign duplicate copies of this Agreement, each of which shall be considered an original without presentation of the other.

12.15 Non-Appropriation. The obligations of the School Board and the City hereunder to pay money in the future fiscal periods are subject to appropriation of sufficient funds for such purpose by the School Board and the City Council of the City then in office.

The parties reasonably expect that their respective future legislative bodies will budget sufficient funds in each fiscal period to cover such obligations and take the necessary action to lawfully appropriate such funds.

In the event either legislative body should fail to appropriate sufficient funds to cover such obligations in a future fiscal period, that party's obligations and rights under this agreement shall terminate.

IN WITNESS WHEREOF, this Agreement is executed the day first written above.

Signed in the Presence of: Board of Education of the Medina

City School District

_____ by:

President

_____ by:

Treasurer
City of Medina

_____ by:

Mayor

_____ by:

President of Council