

**AGREEMENT BETWEEN THE CITY OF HAYSVILLE, KANSAS AND
UNIFIED SCHOOL DISTRICT, # 261, SEDGWICK COUNTY, KANSAS,
ESTABLISHING AN OPERATIONAL FRAMEWORK TO ENCOURAGE
AND PROMOTE THE COORDINATION AND USAGE OF A NATATORIUM.**

THIS AGREEMENT is made and entered into this ____ day of _____, 2016, by and between the City of Haysville, Kansas (hereinafter "City") and U.S.D. No. 261, Sedgwick County, Kansas, (hereinafter "District").

RECITALS

WHEREAS, the Governing Body of City and the Governing Body of District are mutually interested in supporting adequate programs for a Natatorium.

WHEREAS, City and District desire to formalize an operational framework that will allow them to share services and resources so as to leverage economies of scale that will allow for stretching tax dollars beyond that possible by either entity acting alone.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the parties agree as follows:

Section 1. Recitals. The recitals as set forth above, including the general purpose, are hereby incorporated by reference as if fully set forth herein.

Section 2. Administration of Agreement. The Superintendent of Schools of U.S.D. #261 and the Mayor of the City of Haysville, or their respective designees, shall administer this Agreement (hereinafter "Administrators"). The Administrators are hereby directed by their separate governing bodies to administer this Agreement in a manner that best comports with the recitals set forth above. To this end, Administrators may adopt policies, procedures, and schedules as necessary to carry out the purposes of this Agreement. All decisions concerning the safe operation of the Natatorium that effect or arise during the term of this Agreement shall be resolved jointly by the parties. All concerns and/or grievances by either party shall be addressed by reasonable written notification to the other party followed by an attempt to address and rectify the situation through meeting(s) of the Administrators. If policies, procedures, or other needs of this Agreement cannot be mutually agreed upon by the Administrators, the Governing Bodies of each party shall be notified of the need for clarification or modification of this Agreement.

Section 3. Natatorium. District will design, build, own, and maintain a Natatorium facility, consisting of a swimming pool, locker rooms, and adjacent parking lot property, all of which is hereinafter referred to as ("Natatorium"), to be located upon real property legally described in land transfer agreement.

A. Natatorium Design and Construction.

1. District will be solely responsible for selecting the architect and contractor for the design and construction of the entire Natatorium facility.
2. As part of the Natatorium facility, District will design a swimming pool that supports a competitive swimming program, swimming lessons for children of all ages, and recreational use for persons of all ages, including 1,400 square feet of swimming area at a depth of four (4) feet.

B. Usage of Natatorium.

1. District will maintain first priority use of the Natatorium for its swim team practices, meets, and events, and for the use of District's physical educational classes and programs.
2. City shall have second priority use of the Natatorium for community usage and programs.
3. Any third party wishing to schedule use of the Natatorium may be permitted to do so in conformance with this Agreement, and the policies of District.
4. District will provide City with a schedule of use on a semester basis, or more often as determined by Administrators.
5. Scheduling conflicts will be resolved by Administrators in conformance with this Agreement.
6. City will schedule and coordinate the day to day use of the pool in conformance with the schedule of use provided by District.
7. The parties will jointly institute a procedure for tallying the number of persons utilizing the Natatorium, and collecting usage fees as appropriate.

C. Maintenance/Costs of Natatorium.

1. City will perform daily testing and regulating of water quality, and recommend/coordinate any repairs needed with District. District will reimburse City for staffing costs necessary to maintain water quality.
2. District will meter and pay for all utilities.
3. Computers, data, cable, and trash services will be connected by and through the City. District will reimburse City for such services.
4. District will pay for all Natatorium improvements subsequent to initial construction, all structural maintenance and repairs, and provide equipment associated with maintaining the mechanical systems. City will be notified of all improvements.
5. City will maintain data and information as requested by District to assist in development of annual budget for maintenance and operations.
6. Materials, including water maintenance chemicals such as soda ash and chlorine, will be provided by District or reimbursed to the City for purchasing.
7. City will provide mowing up to Natatorium building.
8. District will provide custodial services.
9. District and City will be jointly responsible for the construction and cost of the trash enclosure for the complex.

D. Staffing/Personnel of Swimming Area of Natatorium.

1. City will provide for and supervise an Aquatic Supervisor for the Natatorium. District will reimburse the City for employment costs associated with providing an Aquatic Supervisor.
2. City will provide for and supervise lifeguards used for lap swim, open swim and rentals of the Natatorium. District will reimburse the City for employment costs associated with providing lifeguards for these identified activities.
3. District will reimburse the City for training certifications for aquatics staff. (First Aid, CPR/AED, WSI, AFO)
4. City will provide for and supervise staffing (lifeguards/instructors) for all programs provided by City.

E. Revenue/Income Generated by Natatorium.

1. Fees charged for lap swim, open swim and rentals will be collected by City on behalf of District, and submitted to District.
2. Revenue from programs provided by and operated by City will be retained by City.

F. Fees Associated with Usage of Natatorium.

1. District and City will set the fees for Natatorium usage.
2. Haysville Activity Center members will not be charged Natatorium usage fee pursuant to this Agreement.

G. Parking Lot Maintenance and Usage.

1. District shall construct a parking lot north of Sarah Lane on real property as identified in the attached map. All parking lots in and around Natatorium and City's abutting Activity Center will be shared by patrons of both the Activity Center and the Natatorium.
2. District is responsible for the cost of the adjacent parking lot repairs. District will be responsible for the construction of the parking lot to the north of Sarah Lane as defined in the attached map. Maintenance and repairs for this joint usage parking lot (north of Sarah Lane) will be split between the District and the City as approved by Administrators. Costs for lighting the City and Natatorium parking lots will be calculated internally by City, such costs to be split between the parties.
3. City will be responsible for removal of snow from all parking lots, sidewalks and walkways surrounding the Natatorium building.

Section 4. Additional Consideration. For the term of this Agreement, in addition to the division of costs, services, and labor as set forth above, City will sell water and sewer utility service to District for use within the Natatorium at City's production cost for such utilities, and waive storm water fees associated with the Natatorium and Natatorium parking lots. If the District does not remain a party to the shared use agreement providing the City with secondary use to offer and to be used for community programs at the Natatorium facility, the City will revert back to market rates for future water, sewer and storm water usage by the District.

Section 5. Mutual Indemnification and Insurance.

- A.** City shall at all times save and hold harmless the School District from all liability, costs, damages, and expenses of any kind, including reasonable attorney's fees, for the payment of which District may become liable to any person, firm, or corporation by reason of any claim or damages to the extent caused by acts or omissions of the City, its employees, patrons, agents, invitees, or servants to exercise due care and diligence in the use and operation of the natatorium and relating to its rights and obligations under this Agreement.
- B.** The School District shall at all times save and hold harmless the City from all liability, costs, damages, and expenses of any kind, including reasonable attorney's fees, for the payment of which the City may become liable to any person, firm, or corporation by reason of any claim or damages to the extent caused by acts or omissions of the School District, its employees, patrons, agents, invitees, or servants to exercise due care and diligence in the construction, installation, maintenance, use and operation of the natatorium.
- C.** The Parties to this Agreement shall continue to insure their real and personal property in conformance with State law, recognizing that tort liability associated with all such recreational facilities shall be governed by the Kansas Tort Claims Act, K.S.A. 75-6101 et seq., including the provisions regarding maximum liability as set forth in K.S.A. 75-6105. All insurance policies shall be properly endorsed to show the interests of the parties as additional insureds.

Section 6. Termination. This agreement may be canceled and/or terminated by mutual written agreement. This Agreement shall be interpreted to comply with the provisions of the Kansas Cash Basis Law (K.S.A. 10-1101 et seq.)

Section 7. Annual Review. Annual review shall be for a term of one year, commencing on that date first written above. The operations and maintenance of the Natatorium facility will be reviewed annually by both administrations to evaluate any changes that need to be made.

Section 8. Notice. Notice shall be sent to:

District: Superintendent of Schools, USD 261
Attn: Contract Notification
1745 W. Grand
Haysville, KS 67060
T: (316) 554-2200
F: (316) 554-2230

CITY: City of Haysville
Chief Administrative Officer
P.O. Box 404, 200 W. Grand
Haysville, Kansas 67060
T: (316) 529-5900
F: (316) 529-5925

Section 8. Effective Date and Duration. The Agreement shall take effect upon that day and year first set forth above.

Section 9. Survival of Representation and Warranties. All representations, warranties, covenants and agreements contained herein shall survive the termination of this Agreement.

Section 10. Assignment and Binding Effect. Neither party may assign this Agreement without the prior written consent of the other. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permissible assigns.

Section 11. Applicable Law.

- A. This agreement shall be construed in accordance with the laws of the State of Kansas.
- B. Parties shall comply with all applicable local, state and federal laws, and regulations, and applicable service standards, including District rules and regulations associated with use of its Natatorium, in carrying out this agreement, regardless of whether those legal requirements are specifically referenced in this agreement.
- C. The right of the parties to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the parties shall at all times stay in conformity with such laws.

Section 12. Prior Agreements. This Agreement constitutes the entire understanding and agreement between the parties hereto with respect to the subject matter contained herein and supersedes all prior agreements, negotiations, and discussions concerning any matter contained herein.

Section 13. Resolution of Disputes. The parties shall in good faith attempt to resolve any controversy, dispute, or disagreement arising out of or relating to this Agreement, or the breach thereof, by negotiation. If any such controversy, dispute, or disagreement is not resolved within thirty (30) days, then the controversy, dispute, or disagreement will be submitted to non-binding mediation.

Section 14. Approval and Authorization. Each of the parties warrants and represents by the execution of this Agreement that it has been approved by its Governing Body.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and made effective as of the day and year first set out.

CITY OF HAYSVILLE, KANSAS

U.S.D. No. 261

Bruce Armstrong, Mayor

**Chairman
School District Board**

ATTEST:

ATTEST:

Janie Cox, City Clerk

Clerk

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.