

FACILITIES USE AGREEMENT

This document is a facilities use agreement between the Board of Education of the Worthington City School District (the "Board") and Swiminc, Inc. ("Swiminc") entered into as of June 24, 2019.

Recitals

- A. The Board is a political subdivision of the State of Ohio. Its address is 200 E. Wilson Bridge Road, Worthington, OH, 43085.
- B. Swiminc is the operator of the Natatorium located at 400 W. Granville Road, Worthington, OH 43085. Swiminc's address is 400 W. Granville Road, Worthington, OH 43085.

NOW, THEREFORE, INTENDING TO BE BOUND BY THIS AGREEMENT, the parties agree as follows:

- 1. ***Premises.*** The Board will use the Natatorium for the Board's school-related athletic events and practices.
- 2. ***Term.*** The term of this Agreement will be for the period beginning on July 1, 2019 and ending on June 30, 2023.
- 3. ***Termination.*** In the event either party fails to comply with any covenant or term of this Agreement, either party shall have the right to immediately terminate this Agreement by written notice to the other party.
- 4. ***Fee.*** The Board will pay Swiminc an annual fee of one hundred twenty five thousand dollars (\$125,000), to be paid in equal monthly installments commencing July 1, 2019. The Board will pay a one time amount of seventy five thousand (\$75,000) towards the operational deficit indicated in the Swiminc 2018-19 budget.
- 5. ***Use.*** The Board will use the Natatorium for athletic events and practices. Swiminc agrees to give Board athletic events and practices scheduling priority over all other users and potential users, and agrees that the Natatorium will be available for all athletic events and practices; *provided* that such use, priority and availability of the Natatorium shall be reasonably consistent with the use, priority and availability of the Natatorium for such athletic events and practices prior to the term of this Agreement. The dates and times for athletic events and practices will be scheduled prior to the beginning of each athletic season by the parties. Swiminc will allow the Board to utilize the outdoor facilities as they have been in the past at no cost. Any expansion of the outdoor usage will be billed to the Board.
- 6. ***Building Expenses.*** Swiminc will continue to operate, maintain, repair, and insure the Natatorium during the period of this Agreement. It will pay for building maintenance, utilities, taxes, janitorial services, heating, air conditioning, water and sewage, lighting and electricity. Janitorial services will include the regular cleaning of the Natatorium, including garbage removal. The Board authorizes the Superintendent to contribute up to seventy five

thousand (\$75,000) annually towards maintenance, capital and utility related expenses. The Board, in its sole discretion, may contribute amounts greater than seventy five thousand (\$75,000) to the cost of capital improvements or repairs to the Natatorium determined by the parties to be necessary for compliance with applicable laws, the convenience of the public in attending athletic events and the safety of students participating in school-related athletic events and practices.

7. **Accounting.** Swiminc will work with the Board to agree on how to allocate revenues and expenses associated with the operations of the Natatorium and the outdoor pool area. The Board is not responsible for any cost associated with the operation of the outdoor pools. Swiminc will work with the Board to further differentiate the revenue and expense of the Natatorium to breakdown school district use, competitive swim use and miscellaneous.
8. **Board of Directors.** Swiminc will work to revise Article II Section 2 of their Code of Regulations to include 2 directors to be appointed by the Board.
9. **Waiver/Modification.** Except as expressly provided herein, no modification of this Agreement or waiver of any of its terms will be effective against a party unless set forth in a written document signed by the authorized representatives of the parties. The parties acknowledge that no person has authority to modify this Agreement or waive any of its terms on behalf of a party except as expressly provided in this paragraph. Neither forbearance nor indulgence by a party will result in a waiver of any provisions of this Agreement.
10. **Notices.** Notices to either party under this Agreement shall be made or given at the addresses designated above. A notice is sufficient if in writing and delivered in person or sent by certified mail, return receipt requested.
11. **Entire Agreement.** This Agreement, together with the Lease dated December 6, 1971, as amended, constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous proposals, oral or written, and all prior and contemporaneous negotiations, conversations, and other communications between parties related to its subject matter. Neither of the parties is justified in relying on such proposals, negotiations, conversations, or communications.
12. **Option to Renew.** At the end of the term, the Board may renew this Agreement for an additional term of two years, beginning at the expiration of the original term and ending June 30, 2023, at the same annual fee and subject to all other provisions of this Agreement. This option shall be exercised by giving Swiminc written notice on or before January 1, 2023 of the intention to renew. It is the Board's current intention, not binding or enforceable by Swiminc, to renew this Agreement pursuant to the terms of this paragraph, contingent upon the availability of funds for this purpose.

IN WITNESS WHEREOF, the Board and Swiminc have caused this Agreement to be signed by their duly authorized representatives.

THE BOARD OF EDUCATION OF THE
WORTHINGTON CITY SCHOOL DISTRICT

By: _____
Board President

By: _____
Treasurer

Date: _____

SWIMINC, INC.

By: _____
Board President

Date: _____

