FACILITY USE AGREEMENT
BETWEEN
MISSOULA COUNTY PUBLIC SCHOOLS AND
YMCA MISSOULA

This Facility Use Agreement ("Agreement") is made and effective on this 23rd day of March, 2020 by and between Missoula County Public Schools, 915 South Avenue W., Missoula, MT 59801 (hereinafter referred to as "MCPS"), and YMCA Missoula, of 3000 S Russell St., Missoula, MT 59801 (hereinafter referred to as "YMCA"), for the use of classroom space at Russell Elementary School at 3216 S Russell St., Missoula, MT 59801 for the purpose of providing child care services in Classrooms 203, 204, 205 and 206 (hereinafter referred to, individually and collectively, as "Classrooms").

RECITALS

WHEREAS, Russell School may be closed due to an unforeseen emergency associated with the COVID-19 pandemic;

WHEREAS, the lack of appropriate child care services, resulting from the COVID-19 pandemic, may impede firemen, first responders, doctors, nurses, and hospital and other health care staff, (hereinafter “critical health care workers”), from serving the Missoula community;

WHEREAS, the YMCA desires to use the Classrooms to provide needed child care services for parents, who are both critical health care workers and parents of MCPS students, ages 5-12;

WHEREAS, the YMCA is licensed as a child care provider by the state of Montana and complies with local, state, and federal child care licensing laws, rules, and regulations;

WHEREAS, MCPS recognizes the impact that the shortage of child care could have upon the critical health care workers in the Missoula community, and agrees to provide the Classrooms to the YMCA under this Use Agreement; and

WHEREAS, the parties acknowledge that cooperation and collaboration between MCPS and the YMCA is necessary for the safe and successful use of space by the YMCA.

NOW THEREFORE, in consideration of the foregoing recitals and mutual promises and covenants set forth herein, the parties agree as follows:

1. DESCRIPTION OF PROPERTY. MCPS, for and in consideration of the covenants and agreements set forth herein, does hereby authorize the YMCA to use the Classrooms located in Russell Elementary school building.

2. USE. YMCA will use the Classrooms for the limited purpose of operating child care services between 6:45 a.m. and 7:00 p.m. on Monday, Tuesday, Wednesday, Thursday and Friday (days), while this use authorization is in effect.

It is the intention of the parties that the child care services will be provided to the parents of 5-12 yr. old students enrolled in an MCPS school, provided the parents are critical health care workers in Missoula. The YMCA shall only use the Classrooms for the operation of child care services contemplated herein, unless MCPS gives advance written consent for another use. YMCA shall have no more than 10 people in each Classroom at any given time.
YMCA acknowledges that the child care will be located within Russell Elementary School during the limited time that school is not in session as a specific result of the COVID19 pandemic. At no time shall the YMCA's use of the Classrooms interfere with MCPS operations.

YMCA shall exercise reasonable diligence in developing and implementing screening procedures, in conjunction with MCPS, to ensure that the child care services are available to Missoula’s critical health care workers, who have 5-12 yr. old students enrolled in MCPS.

YMCA shall adhere to MCPS’s alcohol-free, drug-free, tobacco-free, harassment-free, and weapon-free policies relating to its use of the Classrooms.

YMCA warrants that no improvements will be placed on the school property, and that YMCA’s use of the Property, will comply with all laws, ordinances, and zoning, including MCPS’s policies, regulations and rules, (“applicable laws”). YMCA shall pay all costs associated with their child care operation.

3. SERVICES.

a. YMCA Agrees To:
   i. Provide licensed child care services for school age children between the ages of 5 and 12.
   ii. Provide licensed child care services for critical health care workers of Missoula, whose children are between 5 and 12 yrs. old and students at an MCPS school.
   iii. Provide, train and manage qualified YMCA staff and volunteers to support the child care services;
   iv. Clean up after child care hours;
   v. Follow MCPS policies and procedures while providing child care services at Russell;
   vi. Follow local, state and federal laws while providing child care services at Russell;

b. MCPS Agrees To:
   i. Provide the designated classroom space for the YMCA child care services during the designated hours;
   ii. Provide breakfast and lunch for the children that are cared for at Russell;
   iii. Provide internet access and Chrome Books to support online learning as part of MCPS’s delivery of digital education services;
   iv. Allow YMCA to promote, to the extent permissible under current MCPS policies and procedures, their specific services;
   v. Provide access to Russell school for child care services, which is limited to the Classroom space, restrooms, hallways, including access thereto, from the outside door.
   vi. Provide custodial services for the school and Classrooms;
   vii. Provide, as appropriate, access to MCPS’s nursing staff.

4. TERM AND POSSESSION. This Agreement shall be effective on a day to day basis, beginning the 24th day of March, 2020. The Agreement may be terminated by either party at any time, and with as little as two (2) days notice.
5. **CONSIDERATION.** YMCA shall pay One Dollar ($1.00) as rent for use of the Classrooms. Payment shall be made to Missoula County Public Schools, 915 South Ave West, Missoula, Montana 59801.

6. **YMCA's IMPROVEMENTS AND PROPERTY.** YMCA shall not make any alterations without notice to and the written consent of MCPS.

   Any YMCA furniture, equipment or personal property placed in the Classroom space by YMCA and paid for by YMCA, shall remain the property of YMCA and may be removed at any time YMCA may desire.

7. **USES PROHIBITED.** YMCA shall not cause or permit the unlawful disposal, storage, or release of any hazardous substance near or upon the school. YMCA shall not allow any of its employees, representatives, guests, or invitees to do anything affecting the school that is in violation of any environmental law or regulation. As used in this Paragraph, "hazardous substances" are those substances defined as toxic or those substances whose use or disposal is regulated in any fashion by federal laws, laws of the state or county wherein the school is located and any other law or regulation relating to health or environmental protection. YMCA shall abide by all federal, state, and local laws relating to the storage of energy from the Project.

8. **MAINTENANCE AND SERVICES.**
   
   a. **Maintenance.** MCPS shall pay all custodial and maintenance costs to maintain the Classrooms.

      YMCA shall act at its own discretion to minimize any injury to persons or property and shall take all reasonable steps under the circumstances to mitigate any damages.

      YMCA will repair all damage to the school, which occurs during YMCA's use of the Classroom space. Repairs shall be made within a commercially reasonable time. MCPS is not responsible for providing supervision or security for the Classroom space or any improvements placed thereon.

   b. **MCPS's Access.** MCPS shall have access to the school at all times.

   c. **YMCA's Care of Property.** YMCA shall keep the Classroom space in a good, safe, and serviceable order;

   d. **Surrendering the Property.** Upon the expiration of this Agreement, YMCA shall surrender the Classrooms to MCPS in substantially the same condition that the Classrooms were in on the commencement of the Agreement.

      Upon surrender, YMCA shall remove from the Classrooms YMCA's improvements, personal property, trade fixtures, and any other fixtures or improvements (including signs) installed by YMCA. YMCA shall repair any damage to the Classrooms caused by the removal of said improvements, fixtures or personal property and shall return the Classrooms to the same condition it was in prior to the commencement of this Agreement.

9. **ASSIGNMENT AND SUBLEASING.** YMCA shall not transfer, mortgage, encumber, assign or sublease all or any part of the Classrooms without the advance written consent of MCPS.
10. **SIGNAGE.** The parties acknowledge that the use of the school may require the use, erection or other construction of limited signs. Any signs or advertising shall be approved, in advance, by MCPS, other than signs or labeling required under applicable law or regulation. YMCA shall submit photographs or drawings to MCPS in sufficient detail to adequately demonstrate YMCA’s request and MCPS shall approve or disapprove of the construction or erection of such signs at the sole discretion of MCPS. Any signage or advertising utilized within the school shall be tastefully done and shall not create an appearance which detracts from the general atmosphere of the school. Any signage must conform to all state and local regulations. Upon surrender of the Classrooms, MCPS may demand the removal of any or all signage.

11. **INSURANCE.** YMCA shall, at YMCA’s sole expense, maintain in effect at all times during their use of the school, insurance coverage with limits not less than those set for the below:

- Workers’ Compensation – statutory;
- Employers’ Liability - $1,000,000 per occurrence; $2,000,000 annual aggregate;
- Commercial General Liability - $1,000,000 per occurrence; $2,000,000 annual aggregate;
- Automobile Liability - $1,000,000 property damage/bodily injury; $2,000,000 annual aggregate

12. **INDEMNIFICATION OF MCPS.** Except as set forth herein, MCPS shall not be liable for any loss, injury, death or damage to persons or property which at the time may be suffered or sustained by YMCA or YMCA’s employees or agents or by any persons whosoever may at any time be using the school or its improvements or visiting the Property or its improvements or be in, on, or about the same. YMCA shall indemnify, defend and hold MCPS harmless from claims for personal injury, death or property damage from incidents occurring in or about the school or improvements which are (i) caused by the negligent or willful misconduct of YMCA, its agents, employees or invitees; (ii) arise from any breach or default in the performance of any obligation on YMCA’s part to be performed under the terms of this Agreement; or (iii) arise from any penalty, damage or charge imposed for any violation of any laws, ordinance or regulation occasioned by negligence, or willful acts of YMCA on said school.

13. **INDEMNIFICATION OF YMCA.** MCPS shall indemnify, defend and hold YMCA harmless from claims for personal injury, death or property damage from incidents occurring in or about the school or improvements which are caused by the negligent or willful misconduct of MCPS, its agents, employees or invitees or (ii) arise from any breach or default in the performance of any obligation on MCPS’s part to be performed under the terms of this Agreement.

14. **INDEMNIFICATION GENERALLY.** If any action or proceeding shall be brought against an indemnified party, the indemnifying party shall upon notice from the indemnified party defend the same at the indemnifying party’s expense by counsel reasonably satisfactory to the indemnified party. When the claim is caused by the joint negligence or willful misconduct of MCPS and YMCA, MCPS's duty to defend, indemnify and hold YMCA harmless shall be in proportion to MCPS's allocable share of the joint negligence or willful misconduct. Said indemnification shall survive the termination of this Agreement by default or any other act of the parties or action of law.

15. **PARTIES BOUND.** The covenants and conditions herein contained shall, subject to the provisions as to assignment, transfer and subletting, apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto, and all of the parties hereto shall be jointly and severally liable hereunder to the extent of their guarantees.
16. **CONFLICTS OF LAW AND JURISDICTION.** This Agreement shall be governed and construed pursuant to the laws of the State of Montana. The parties agree that any litigation concerning this Agreement will be brought in the Fourth Judicial District, Missoula County, Montana.

17. **SEVERABILITY.** If any provision of this Agreement shall be declared to be invalid, void or illegal, it shall in no way affect, impair or invalidate any other provision hereof and such other provisions shall remain in full force and effect. Each provision of this Agreement will be and is deemed to be separate and severable from each other provision.

18. **ATTORNEY’S FEES AND COSTS.** In the event either party finds it necessary to employ counsel in order to enforce or rescind any term or provision of this Agreement, including any proceeding in bankruptcy, before any officer or judge of the U.S. Bankruptcy Court or any proceeding pertaining thereto, the prevailing party shall be entitled to recover from the other party in addition to costs and disbursements allowed by law, the prevailing party’s reasonable attorney’s fees. Attorney’s fees shall include any attorney’s services rendered prior to the institution of litigation or proceedings in bankruptcy and include all matters pertaining to litigation, or proceedings in bankruptcy as may be necessarily incurred in such proceedings and shall include an estimate of the attorney’s fees to be incurred by the prevailing party following any initial decision or judgment entered in connection with that matter.

19. **WAIVER.** No waiver by any party of any provision of this Agreement shall be deemed to be a continuing waiver of that provision, or of any other provision hereof, or of any subsequent breach by the other party of the same or any other provision. A consent or approval to an act of the other party shall not be deemed to render unnecessary the obtaining of consent and approval for any subsequent act whether or not similar to the prior act consented to or approved.

20. **TIME IS OF THE ESSENCE.** Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

21. **ENTIRE AGREEMENT.** This document represents the entire agreement of the parties regarding the lease of the property described above and may not be modified or amended except by subsequent written instrument duly authorized and signed by both parties. Nothing herein shall preclude the parties from mutually agreeing to modify or amend this Agreement; however, any such modifications or amendments shall be in writing and authorized and signed by both parties.

22. **HEADINGS.** The paragraph captions contained in this Agreement are for convenience only and shall not be considered as construing or interpreting any provision hereof.

**MISSOULA YMCA**

Heather Foster  Date
Chief Executive Officer

**MISSOULA COUNTY PUBLIC SCHOOLS**

Pat McHugh  Date
Executive Director of Business & Ops.