

Prepared by: Mitchel T. Behr, Asst. City Attorney, 410 E. Washington St., Iowa City, IA 52240 (319) 356-5030

RESOLUTION NO. 07-14

RESOLUTION AUTHORIZING EXECUTION OF A CHAPTER 28E AGREEMENT BETWEEN THE CITY OF IOWA CITY AND THE IOWA CITY COMMUNITY SCHOOL DISTRICT INVOLVING THE GRANT WOOD SCHOOL GYMNASIUM

WHEREAS, the Iowa City Community School District (ICCSA) has constructed a new gymnasium at Grant Wood Elementary School, 1930 Lakeside Drive; and

WHEREAS, the City and ICCSD agreed to construct the gymnasium of sufficient size to allow the City to provide recreational opportunities for its citizens at the site; and

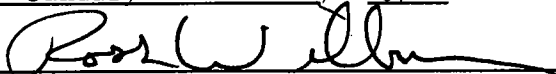
WHEREAS, as consideration for the larger gymnasium to be constructed at the school, the City has contributed \$460,000 towards construction costs; and

WHEREAS, it is necessary for The City and ICCSD to enter into an agreement pursuant to Chapter 28E of the Code of Iowa (2005) to outline the responsibilities of each party.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF IOWA CITY, IOWA, THAT:

1. The Mayor and City Clerk are hereby authorized to execute in triplicate the attached Chapter 28E agreement with the Iowa City Community School District, and said agreement is hereby approved as to form and content, and is found to be in the best interests of the citizens of Iowa City, Iowa.
2. The City Clerk is hereby authorized to forward two of the original executed Resolutions and Agreements to the Offices of Superintendent, Iowa City Community School District, for approval and execution by the School District, recording with the offices of the Johnson County Recorder and filing with the Iowa Secretary of State, with recording and filing costs to be shared by the City and the School District.

Passed and approved this 9th day of January, 2007.


MAYOR

Approved by
 12/18/06
City Attorney's Office

ATTEST: 
CITY CLERK

It was moved by Bailey and seconded by Vanderhoef the Resolution be adopted, and upon roll call there were:

AYES:

X
X
X
X
X
X
X

NAYS:

ABSENT:

_____ Bailey
_____ Champion
_____ Correia
_____ Elliott
_____ O'Donnell
_____ Vanderhoef
_____ Wilburn

**GRANT WOOD SCHOOL GYM
28E AGREEMENT**

THIS AGREEMENT entered into by and between the City of Iowa City, 410 E. Washington St., Iowa City, Iowa 52240, hereinafter referred to as "The City"; and the Iowa City Community School District, 509 S. Dubuque Street, Iowa City, Iowa, hereinafter referred to as "ICCSA."

WHEREAS, ICCSD has constructed a new gymnasium at Grant Wood Elementary School, 1930 Lakeside Drive; and

WHEREAS, The City and ICCSD discussed constructing the gymnasium of sufficient size to allow The City to provide recreational opportunities for its citizens at the site; and

WHEREAS, as consideration for the larger gymnasium to be constructed at the school, The City has agreed to contribute \$460,000 towards construction costs; and

WHEREAS, it is necessary for The City and ICCSD to enter into an agreement pursuant to Chapter 28E of the Code of Iowa (2005) to outline the responsibilities of each party.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

I. PURPOSE. This Agreement will provide for the development, ownership, management and operation of a joint education and recreation facility in the above-referenced elementary school, including without limitation, the gymnasium and a gymnasium storage space (the "Facility"). This Agreement is made between the parties under the authority of Chapter 28E of the Code of Iowa (2005) and implements the terms, conditions, and intentions of the parties as it pertains to said Facility.

II. JOINT EXERCISE OF POWERS. The parties agree the purpose of this Agreement is to jointly exercise their respective powers under Chapter 28E of the Code of Iowa (2005), to finance, develop, construct, operate and manage a public improvement, to wit: An education/recreation facility for the primary use as an elementary school and secondary use as a recreational facility.

III. DURATION. The parties hereto agree this Agreement shall be effective upon its execution by both parties and remain in effect for an initial term of ten (10) years with guaranteed options as described herein.

IV. ADMINISTRATION/OWNERSHIP. The parties agree that the Superintendent of the ICCSD shall be designated as the Administrator for the purposes of this Agreement as provided in Section 28E.6 of the Code of Iowa (2005). ICCSD shall be the owner of the Facility. The City's rights to use the Facility shall be determined by this agreement.

V. FINANCING OF THE CONSTRUCTION OF THE FACILITY.

A. ICCSD shall finance the construction of the new facility by means other than specified in this agreement.

B. The City shall reimburse ICCSD for the additional costs necessary to construct the Facility. These costs shall be in the amount of not-to-exceed \$460,000. Said reimbursement shall be made within 30 days of receipt of invoicing from ICCSD.

VI. MANAGEMENT AND OPERATION OF THE JOINT EDUCATION/RECREATION FACILITY.

A. In consideration of The City's contribution to the construction costs of the Facility, ICCSD hereby provides use of the Facility to The City for its benefit, in accordance with the following terms and conditions. The City's right to use and occupy the Facility shall commence at midnight on the 20th day of August, 2006 and shall terminate at midnight on the same date ten (10) years hence.

B. Possession and Use of the Facility. The City's right to occupy and use the Facility is not exclusive. While it is the intent of this Agreement that the Facility is to be shared and jointly used by ICCSD and The City, the timely scheduled activities of Grant Wood Elementary School shall take precedence. The use of the gymnasium by The City shall be timely scheduled around ICCSD activities and shall occur in the early morning hours, the late afternoon and evening hours and on weekends. However, ICCSD and The City may, from time to time, agree to alter and adjust the schedule for the use of the Facility as may be mutually beneficial to each party.

1. The parties hereby recognize all events related to the ICCSD and PTA/PTO or school sponsored activities will be scheduled in advance and blocked off the calendar at least 30 days in advance and supervised by ICCSD. The City agrees that the Facility will not be available for its use during those times. The parties agree that it is the intention of this Agreement that ICCSD activities in the Facility shall not be disrupted by City activities and that, consequently, timely scheduling of ICCSD activities (at least 30 days in advance) shall have priority over all City activities.

2. The City agrees to manage the Facility from 3 p.m. to 10 p.m. weekdays and twenty-four (24) hours a day on weekends. Included in this management is scheduling of all outside groups, supervision of the Facility when no school staff is on duty, and collecting rental fees where appropriate. When school is not in session The City may schedule activities before 3:00 p.m. weekdays so long as such activities are scheduled and approved in advance, and do not interfere with school activities or maintenance efforts.

3. The City acknowledges that ICCSD has certain Board policies governing the use of its facilities. These include policies relating to health and welfare and are designed for the benefit of ICCSD and all Facility users. The City agrees that during the time it is managing and/or using the Facility, these Board policies will continue to apply and ICCSD will provide copies of all applicable policies to The City prior to the commencement of this Agreement and shall provide modified policies to The City from time to time throughout the term of this Agreement.

4. As part of this Agreement, The City will also have the ability to schedule and use the Facility, which includes the gymnasium and gymnasium storage space. The Facility shall remain under the control of ICCSD and the use of it will be scheduled on a semi-annual or more frequent basis by The City Parks and Recreation Director, or his/her designee, and ICCSD's Superintendent or the Superintendent's designee. The designated persons will meet periodically to schedule and coordinate the use of this facility. Though ICCSD will remain in control of this facility and other groups may have the opportunity to use the facility, The City shall have first priority on the use of the space whenever available.

C. Operation and Maintenance. ICCSD shall have the primary responsibility and authority for the operation and maintenance of the Facility, and shall have the responsibility to provide general supervision of the Facility during ICCSD's normal operating hours. The operation of the Facility shall be under the general administration and supervision of the Superintendent of ICCSD, who may delegate responsibility for any day to day operation of the Facility to the principal of the Grant Wood School, or to such other individual as the Superintendent may deem appropriate.

The City shall have the responsibility to provide appropriate personnel to supervise the use of the Facility during the periods of The City's use. During periods of The City's use of the facility, The City shall provide personnel to monitor the Facility and will clean the Facility so that it is the same condition as it was prior to usage. ICCSD shall provide The City with keys to the Facility for such purposes.

D. Budget and Cost Sharing. It shall be the primary responsibility of ICCSD to pay for all costs associated with the Operation of the Facility, except as provided herein. The costs of refurbishing the Facility or any part thereof shall be apportioned between the parties based on each party's actual use of the Facility or the portion(s) thereof at issue; provided that ICCSD shall not proceed with any refurbishment of the Facility for which ICCSD intends The City to pay any portion thereof without first obtaining approval of the proposed refurbishment and portion of cost attributable to The City's use. It is understood that, while repairs made as part of the general maintenance and upkeep of the Facility, as such, shall be the responsibility of ICCSD, repairs made as a result of misuse of the Facility shall be made by the party utilizing the Facility. During times of the City's use of the Facility, The City may charge for programs that will be held in the gymnasium and may rent out the gymnasium.

VII. ASSIGNMENT AND SUBLEASE. Except as expressly provided in this Agreement, The City will not sublease the Facility to any person or entity for any purpose.

VIII. RENEWAL OF AGREEMENT. The City shall have the option to renew this Agreement for five (5) additional periods of five (5) years, each upon the same terms and conditions as provided herein, provided that The City is not in default of any of the material provisions of the Agreement at the time the renewal is to be effective. Renewal will be automatically effective for each option period unless The City gives written notice to ICCSD of non-renewal at least 90 days prior to the date upon which the initial terms of the Agreement, or any term, is set to expire.

IX. DECLARATION OF DEFAULT AND NOTICE. In the event that either party determines the other party has defaulted in the performance of its material obligations hereunder, the aggrieved party may declare that default has occurred and give notice of such to the defaulting party as listed in Paragraph X below. Said Notice of Default shall be given in writing and outline the default with particularity, and describe what action is required of the defaulting party to correct the default. If at the end of said thirty (30) day period, the default has not, in the opinion of the aggrieved party, been corrected, that party may pursue its remedies as provided herein, however, that if the default is of such a nature that it cannot be remedied within said thirty day period, the defaulting party shall not be in material breach of this Agreement so long as the defaulting party has made good faith efforts to remedy the default during said thirty day period and remedies the default as soon as practicable.

X. REMEDIES UNDER DEFAULT. In the event of default by The City in its obligations to make contributions to the cost of the construction of the Facility as provided herein, or to make contribution to the costs of refurbishment, or default by The City in the performance of any material provision of this Agreement, ICCSD, may, at its option, after declaring default and giving notice thereof and a chance to remedy the default as described in Paragraph IX above, seek termination of this Agreement or specific performance of its provisions.

In the event of default by ICCSD in its obligation to operate and maintain the Facility and allow The City access to the Facility as provided herein, The City may, at its option, after declaring default and giving notice thereof and a chance to remedy as described in Paragraph IX above, seek termination of the Agreement or specific performance of its terms.

In order to obtain termination of this Agreement or specific performance of its provision, the party seeking such relief shall, after expiration of the thirty-day period following receipt of notice of default, commence a cause of action in the Johnson County District Court. The petitioning party may seek termination and specific performance as alternative forms of relief in the same cause of action. Nothing in this Agreement shall be construed to require the petitioning party to elect its remedy at the time the suit is filed and the petitioning party, shall, to the extent permitted by the Court, be allowed to amend its Petition to seek other relief, or to seek alternative forms of relief.

XI. EFFECT OF TERMINATION. In the event this Agreement is terminated as provided above, The City's right to occupy and use the Facility and its corresponding obligation to contribute to the costs of construction and refurbishment shall cease. ICCSD shall thereafter have unencumbered ownership of the Facility.

XII. MODIFICATIONS TO THE AGREEMENT. The City and ICCSD acknowledge that from time to time it may be to their mutual advantage to modify the terms and conditions of this Agreement. In that event, both parties agree that any mutually agreed upon modifications shall be allowable as they may become necessary or desirable to implement the general purpose of this Agreement; provided, however, that no waiver, change, modification or amendment of this Agreement shall be binding upon either party unless in writing and signed by the affected party. The waiver of either party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that provision by the same party, or of any other provision or condition in this Agreement.

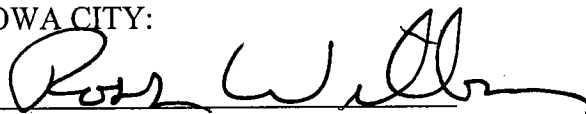
XIII. INDEMNITY AND HOLD HARMLESS. The City hereby agrees to indemnify, defend and hold harmless ICCSD, its officers, agents and employees, against any and all claims, suits, actions, debts, damages, costs, charges, and expenses, including court costs and reasonable attorney's fees, and against any and all liability for property damage and personal injury, including death resulting directly or indirectly therefrom, arising from any act of negligence of The City, either active or passive, or those of its agents, employees, assigns, or any other persons acting on behalf in supervising use of the Facility and accompanying property by City employees, staff, personnel or invitees pursuant to the terms of, and for the purposes specified in, this Agreement, or arising from The City's supervision of any other use of the premises by The City, its agents, employees, assigns, invitees, or any other person acting on its behalf, or arising from the City's supervision of any activity which The City sponsors, suffers or allows to occur on the property.

ICCSD hereby agrees to indemnify, defend and hold harmless The City, its officers, agents, and employees, against any and all claims, suits, actions, debts, damages, costs, charges, and expenses, including court costs and reasonable attorney's fees, and against any and all liability expenses, including court costs and reasonable attorney's fees, and against any and all liability for property damage and personal injury, including death resulting directly or indirectly therefrom, arising from any act of negligence of ICCSD, either active or passive, or those of its agents, employees, assigns, or any other persons acting on behalf in the design, construction, operation, maintenance, or general supervision of the public use of the Facility, and accompanying property pursuant to the terms of, and for the purposes specified in, this Agreement, or arising from any other use of the premises by ICCSD, its agents, employees, assigns, or any other person acting on its behalf, or arising from any activity which ICCSD sponsors, suffers or allows to occur on the property.

XIV. APPROVAL. This agreement has been approved as required by law by the City Council of the City of Iowa City and the Board of Directors of the Iowa City Community School District on the dates as indicated below. The parties hereto understand this Agreement may conflict with current ICCSD policy and said policy shall be revised to conform to the terms of this Agreement.

Dated: January 9, 2007

IOWA CITY:



Ross Wilburn, Mayor

ATTEST:



Marian Karr, City Clerk

Dated: _____



President, Board of Directors



Secretary, Board of Directors