

JOINT POWERS AGREEMENT

THIS AGREEMENT is made effective as of the ____ day of _____, 2000, by and among Independent School District No. 270, an independent school district created and existing under the laws of the State of Minnesota (the "District"), the Housing and Redevelopment Authority in and for the City of Golden Valley, a body corporate and politic under the laws of Minnesota (the "HRA"), and the City of Golden Valley, a Minnesota municipal corporation (the "City").

1. PURPOSE.

The District, the HRA and the City, in lieu of separately constructing, operating and maintaining certain recreational, classroom and other facilities for their respective individual uses, have determined that it is more economical and efficient to construct, operate and maintain a single facility to be known as the Meadowbrook Community Center (the "Center"), consisting of two gymnasiums (collectively, the "Gymnasium") and community education classrooms, for the joint use of both the District and the City. The Center will be constructed adjacent to the Meadowbrook Elementary School Building (the "School Building") and shall adjoin the School Building by a building link comprising a portion of the Center. The purpose of this agreement is to set forth the preliminary terms and provisions governing the financing, ownership, construction, operation, maintenance of the Center. The guiding principle embodied in this Agreement is the mutual desire of the District, the HRA and the City to maximize the use of the Center by all members of the District's and City's respective constituencies. This Agreement is made pursuant to Minnesota Statutes Section 471.59.

2. USE.

The parties agree that, to the extent permitted under applicable law, the Center will be principally used to provide educational, recreational, and athletic programs, community-based activities, and related activities, such as those commonly provided at community activity centers and school athletic facilities in the Twin Cities metropolitan area. Such programs and activities will be compatible with the use of the Meadowbrook Elementary School (the "School") as a public elementary school and shall in all respects be consistent with the preservation of the health, safety and well being of the District's public school students attending, or otherwise located at, the School from time to time. All uses shall be subject to such rules and restrictions as are generally applicable to facilities owned or under use by the District and the City, and in effect as of the date of this Agreement, together with such other reasonable rules and restrictions as may be adopted from time to time with respect to the Center and jointly approved by the District and the City. In the

case of any conflict between such rules and restrictions, the District and the City shall cooperate with each other to establish a mutually acceptable policy applicable to the Center in substitution of any such conflicting rules or restriction. Notwithstanding the foregoing, the parties agree that any rules and restrictions which are a part of any crisis management plan to which the Center is subject shall take priority over any conflicting rules and restrictions.

3. OWNERSHIP/LEASE.

The Center shall be constructed on land presently owned by the HRA (the "HRA Parcel"), together with land presently owned by the District (the "District Parcel"), all as hereinafter provided (the HRA Parcel and the District Parcel collectively referred to herein as the "Land")(the Land and the Center collectively referred to herein as the "Property"), and shall be generally located as depicted on Exhibit "A" attached hereto. The HRA agrees that it shall lease the Property to the District pursuant to the terms and provisions of a triple net lease agreement to be entered into, on or before the date of approval of the Preliminary Plans in accordance with this Agreement, between the HRA, as landlord, and the District, as tenant (the "Lease"). Under the terms of the Lease, the District shall pay the HRA a base rent equal to market rent for unimproved property of a size, configuration and location reasonably comparable to the HRA Parcel. In accordance with the terms of the Lease, the HRA shall provide the District with a tenant improvement allowance in an amount sufficient to enable the District to undertake and complete the design and construction of the Center, all as more fully set forth herein, and as shall be further provided for in the Lease. Upon final completion, the Center shall be deemed property of the HRA, as to which, together with the Land, the District shall retain a leasehold interest.

4. LICENSE.

(a) Contemporaneous with the execution of the Lease by the HRA and the District, and in any event on or before the date of approval of the Preliminary Plans in accordance with this Agreement, and in consideration of the HRA's contribution of the Tax Increment Contribution (as hereinafter defined) in accordance with Section 7(c) of this Agreement, the District and the City shall hereafter enter into a Shared Use and Operating Agreement (the "Use and Operating Agreement") pursuant to which the District shall grant the City a nonexclusive license to use the Gymnasium and various common areas of the Center during such periods of time as shall not be needed by the District for its purposes, all as shall be more fully set forth in the Use and Operating Agreement. As part of the license to be granted by the District to the City, and in

consideration of the HRA leasing the Center to the District, the District shall additionally grant the City a non-exclusive license to allow vehicles using the Center to park in parking areas located or to be located on the Property, and on land owned by the District, the location of which shall be determined after completion of final design plans for the Center and before commencing construction of the Center (the "Parking Area"). The use of the Parking Area will be on a first come, first served basis, with no priority or reserved spaces for either party unless first agreed to in writing by both parties; provided, however, in no event shall the use of the Parking Area by the City or its invitees interfere with the District's normal use thereof during the school day.

(b) The District and the City agrees that each shall equitably share in the Gymnasium Operating Costs throughout the term of both the Lease and the Use and Operating Agreement (collectively, the "Term"). As to the City's share of the Gymnasium Operating Costs, and for each fiscal year of the District, or fractional portion thereof, during the Term, the City shall pay a percentage (the "City Use Percentage") of the total estimated operating costs applicable to the

Gymnasium and all interior common areas of the Center to which the City shall be granted access under the Use and Operating Agreement, which City Use Percentage shall be based upon the extent to which the City shall be granted exclusive rights of access to one or more of the gyms located in the Gymnasium. Such total estimated operating costs shall be jointly determined, based upon an estimate of operating costs for similar facilities, which amount, from and after the initial date of determination, shall be adjusted annually based upon fluctuations in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor for the Minneapolis/St. Paul Metropolitan Area.

5. LAND PURCHASE BY HRA.

In connection the development of the Center, the HRA shall acquire from the District the District Parcel, generally located as depicted on Exhibit "B" attached hereto, subject to satisfaction, in the reasonable judgement of the HRA, of the following conditions and contingencies: (i) the District Parcel shall be free from any environmental contamination or hazardous substances; (ii) the District Parcel shall be free and clear of any and all liens and encumbrances, other than those expressly approved by the HRA; (iii) the District shall provide the HRA with a title commitment evidencing the District's unfettered fee title in and to the District Parcel; (iv) all real estate taxes, utility costs, and other costs of operation relating to the District Parcel shall be prorated between the District and the HRA as of the date of closing; and (v) all other closing costs shall be shared equally between the District and the HRA. The purchase price for the District Parcel shall equal \$150,000.00. The District Parcel, once acquired by the HRA, shall be included in, and deemed a part of, the Land. Acquisition of the District Parcel by the HRA is necessitated

by the fact that a portion of the Center shall be located on the District Parcel, and, but for such acquisition by the HRA, would be deemed an encroachment on and against that real property owned by the District upon which is situated the School Building. The precise location and dimensions of the District Parcel shall be determined by formal survey, and shall be limited to that portion of the District's real property as shall be reasonably necessary to eliminate any such encroachment.

6. EASEMENT TO HRA.

In connection with the development of the Center, the District and the HRA shall enter into an Easement Agreement (the "Easement Agreement") pursuant to which the District shall grant an easement to the HRA for that portion of the District's real property as shall be necessary for the construction and placement of the building link portion of the Community Center which shall connect the Community Center to the School Building, all as shall be more fully set forth in the Easement Agreement.

7. DESIGN AND CONSTRUCTION.

(a) The District, in accordance with the design and construction provisions to be contained in the Lease, shall enter into an agreement with an architectural design firm to design the Center. The District will include HRA representatives in the review of the preliminary design and construction plans (the "Preliminary Plans") for the Center to ensure that

the plans meet the HRA's needs. The Preliminary Plans shall be approved by both parties on or before the 31st day of May, 2000. If for any reason the District and the HRA are unable to agree on the Preliminary Plans on or before that date, this Agreement will be null and void at the option of either party upon written notice to the other, and neither party will be further bound, except for the payment of design and survey expenses which shall be borne equally between the HRA and the District; provided, however, in the event this Agreement becomes null and void, as aforesaid, at the option of the District, then the District shall be obligated to acquire the HRA Parcel for a cash consideration of \$100,000.00, subject to satisfaction, in the reasonable judgement of the District, of the following conditions and contingencies: (i) the HRA Parcel shall be free from any environmental contamination or hazardous substances; (ii) the HRA Parcel shall be free and clear of any and all liens and encumbrances, other than those expressly approved by the District; (iii) the HRA shall provide the District with a title commitment evidencing the HRA's unfettered fee title in and to the HRA Parcel; (iv) all real estate taxes, utility costs, and other costs of operation relating to the HRA Parcel shall be prorated between

the HRA and the District as of the date of closing; and (v) all other closing costs shall be shared equally between the HRA and the District.

(b) If the parties agree on the preliminary design plans, the District, in accordance with the design and construction provisions to be contained in the Lease, shall direct that final plans be prepared, and shall include the City and HRA representatives in the review of such plans. If such final plans are approved, and at such times as the parties may jointly elect to proceed with the construction of the Center, then the District shall enter into a contract for the construction of the Center, and complete the construction of the Center.

(c) All costs and expenses associated with the acquisition by the HRA of the District Parcel, and with the design and construction of the Center, less the HRA's contribution of the Tax Increment Contribution (as hereinafter defined), shall be paid by the HRA from proceeds of Lease Revenue Bonds (to the extent so allocated to the design and construction of the Center, such proceeds are hereinafter referred to as the "Bond Proceeds"). Separate and apart from the Bond Proceeds, and in consideration for the granting by the District to the City of a nonexclusive license to use the Gymnasium pursuant to the terms of the Use and Operating Agreement, the HRA shall contribute cash for the construction of the Center in an amount equal to One Million Dollars (\$1,000,000) from tax increment funds from the Golden Hills Tax Increment Financing District (the "Tax Increment Contribution"). The tenant improvement allowance under the Lease shall be equal to the sum of the Bond Proceeds and the Tax Increment Contribution. The Bond Proceeds, together with accrued interest thereon calculated at the interest rate applicable to that portion of the Lease Revenue Bonds from which the Bond Proceeds shall have been derived (the "Bond Rate"), shall be repaid to the HRA by the District in installments corresponding in frequency and amount with the HRA's debt service payment schedule applicable to the Bond Proceeds and accrued interest, over the term of the Lease as additional rent under the Lease (the "Additional Rent").

(d) The parties acknowledge and agree that the District may, concurrently with construction of the Center, undertake to remodel a portion of the School Building, and, in so doing, may include such work within the scope of any architectural and construction contracts entered into for the construction of the Center. All costs and expenses of such remodeling shall be paid for separately by the District.

(e) The procedures for the awarding of construction contracts, payment of costs and expenses, and completion of construction shall be more fully set forth in the Lease.

8. OPERATION AND MAINTENANCE OF GYMNASIUM.

- (a) The District and the City will operate the Gymnasium in accordance the Use and Operating Agreement. In accordance with the terms and provisions of the Use and Operating Agreement, the operation and maintenance of the Gymnasium will be under the jurisdiction of an operating committee consisting of the District Superintendent and the Golden Valley City Manager/HRA Director, or their designees (the "Operating Committee"). Decisions of the Operating Committee must be unanimous.
- (b) The Operating Committee will determine which employees of the District and/or the City shall be responsible for the operational scheduling and maintenance of the Gymnasium. Each party shall be responsible for supervising the Gymnasium when it is being used by that party, unless otherwise mutually agreed.
- (c) The direct costs of all District employees shall be the responsibility of the District. The District will provide all of the necessary utilities, maintenance and repair for the Gymnasium and the parking areas used in connection with the Gymnasium, including snow plowing and lighting. The City shall be responsible for the portion of said costs equal to the City Use Percentage.
- (d) The District and the HRA will jointly approve an annual budget for operations and capital replacement costs for the Gymnasium coextensive with the District's fiscal year. The District will be responsible for the accounting and payment of the expenditures for the operation and capital replacement for the Gymnasium. The City shall be responsible for the portion of said costs equal to the City Use Percentage.
- (e) Each party will be responsible individually for the extra out-of-pocket expenses, such as equipment rental, extra custodial time, extra supervision, and food service costs, arising from any special event sponsored by that party and held at the Gymnasium. Except as otherwise agreed, neither party may charge the other party any other fee for use of the Gymnasium.
- (f) The parties intend to use the Gymnasium to the greatest extent possible by both parties and the community for activities and programs. The parties agree to prepare an annual calendar of activities and events for the Gymnasium, which shall be complete to the extent possible by May 1st of each year, with adjustments for the second half of the year made by November 1.
- (g) The schedule for the use of the Gymnasium shall be governed by the Use and Operating Agreement, and shall be in accordance with Schedule I attached hereto.

(h) Standard capital equipment for activities offered at the Gymnasium, such as backboards, score boards, volleyball standards, etc., will be jointly purchased and owned by the District and the City, with each party sharing equally in all acquisition costs for such equipment. Specialized equipment required by either party for its own use will be purchased and maintained solely by the respective party. Designated storage will be provided for shared equipment and specialized equipment required by either party.

(i) The parties may make the Gymnasium available for use by other groups, either on a rental or rent-free basis, in accordance with District Board Policy [KG], "Community Use of Facilities," as in effect on the date of this Agreement. Any changes to that policy will not be effective with respect to the Gymnasium unless approved by the Operating Committee, and shall become effective with respect to the Gymnasium contemporaneous with such approval. Each party may retain for its own use any and all revenue received by such party from program fees, concessions, and ticket sales for events sponsored solely by such party.

(j) The joint use of the Gymnasium contemplated by this Agreement shall not eliminate or diminish any other joint use arrangements which currently exist between the parties for other facilities.

9. LIABILITY, INSURANCE.

(a) The District's employees who provide services or programs in the Center will be considered employees of the District alone and in no way will be considered employees of the HRA or the City. The City's employees who provide services or programs in the Center will be considered employees of the HRA or the City alone and in no way will be considered employees of the District. Each party will be responsible for all costs associated with their own employees, including without limitation salary, wages, benefits, and all related costs of worker's compensation insurance.

(b) Each party will obtain a policy of public liability insurance, either from a reputable insurance company authorized to do business in Minnesota or through a self-insurance pool organized pursuant to Minnesota Statutes § 471.981. To the extent possible (in the case of insurance through a self-insurance pool organized pursuant to Minnesota Statutes § 471.981), each party to this Agreement will name the other parties to this Agreement as additional insureds with respect to the Center. The limits of liability must cover each party's respective liability exposure under Minnesota Statutes Chapter 466 or other applicable statutes or regulations.

(c) The District will obtain sufficient insurance (in accordance with prevailing community standards) to protect the parties' exposures to loss and liability during the

period of construction of the Center. This insurance, together with the payment of any deductibles, will be deemed part of the Center construction cost, and a prorated portion thereof shall be deemed part of the Gymnasium construction cost.

(d) Once the Center is constructed and occupied, the HRA will obtain sufficient property and casualty insurance (in accordance with prevailing community standards) to cover the replacement cost of the Center and its contents.

10. INDEMNIFICATION.

(a) District. The District hereby indemnifies and holds the HRA and the City harmless from and against any and all claims, demands, liabilities, and expenses, including reasonable attorney's fees, arising from any breach of, or default under, this Agreement by the District, except to the extent caused by either or both the HRA's and the City's negligence or willful misconduct. In the event any action or proceeding shall be brought against the HRA or the City by reason of any such claim, the District shall defend the same at the expense of the District by counsel reasonably satisfactory to the City. The provisions of this Section shall survive any termination of this Agreement, including without limitation any termination pursuant to Sections 11 and 12 of this Agreement.

(b) HRA/City. The HRA and the City hereby indemnify and hold the District harmless from and against any and all claims, demands, liabilities, and expenses, including reasonable attorney's fees, arising from any breach or, or default under, this Agreement by either or both the HRA and the City, except to the extent caused by the District's negligence or willful misconduct. In the event any action or proceeding shall be brought against the District by reason of any such claim, the HRA and the City shall defend the same at the expense of the HRA and the City by counsel reasonably satisfactory to the District. The provisions of this Section shall survive any termination of this Agreement, including without limitation any termination pursuant to Sections 11 and 12 of this Agreement.

11. TERMINATION FOR CAUSE.

In the event of any material breach of any of the terms of this Agreement, the party alleging the breach may seek to terminate this Agreement by giving all other parties written notice specifying the nature of the breach. If the breach is not remedied within thirty (30) days of the date of delivery of such notice, or if additional breaches of a materially similar nature occur within the thirty (30) day period following the date of delivery of said notice, the party alleging the breach may send all other parties a second written notice setting forth the time, place and date of a meeting to discuss the breach, the time, date and place for which shall in all respects be reasonable and shall specify a date not later than ten (10) days from the date of such written notice. The Superintendent for

the District or his or her designee(s), the _____ for the HRA or his or her designee(s), and the City Manager for the City or his or her designee(s) shall attend such meeting. If the breach continues for more than twenty (20) days after the date of such meeting, the party alleging the breach may send a final written notice of termination to all other parties terminating this Agreement effective upon the date of delivery of such notice. Any termination of this Agreement in accordance with this Section 11, shall automatically, and without further notice to any party to this Agreement, result in the collective termination of the Lease and the Use and Operating Agreement.

12. TERMINATION WITHOUT CAUSE.

(a) Any party may terminate this Agreement without cause, by delivery of written notice of termination to all other parties to this Agreement prior to the occurrence of the earliest of the following (i) the date upon which the District obligates itself under any construction contract for any portion of the construction of the Center (provided that the District first provides to the HRA and the City ten (10) days advance written notice of the date upon which it intends to enter into any such construction contract); (ii) the date upon which the HRA acquires the District Parcel; or (iii) the date upon which all parties execute both the Lease and the Use and Operating Agreement. In the event of any termination of this Agreement pursuant to this Section 12(a), the terminating party shall be responsible for, and shall pay, all costs and expenses incurred by the other parties to this Agreement to the extent such costs and expenses were reasonably related to the transactions and undertakings contemplated under, and in accordance with, this Agreement, including without limitation, all costs and expenses of, or related to, all survey, title, architectural and engineering work; acquisition by, or sale to, the HRA of the District Parcel; seeking and/or obtaining vacation of any public rights of way on property owned by the District (including without limitation the District Parcel); preparation and/or processing of any planned unit development applications or petitions; seeking and/or obtaining any municipal or other governmental approvals; and negotiation and preparation of this Agreement, the Lease and the Use and Operating Agreement. Any termination of this Agreement in accordance with this Section 12(a), shall automatically, and without further notice to any party to this Agreement, result in the collective termination of the Lease and the Use and Operating Agreement.

(b) The District may terminate this Agreement without cause, effective as of June 30 of any calendar year, upon delivery to the City and the HRA, on or before February 1 of such calendar year, of advance written notice of termination. In the event of any termination of this Agreement by the District in accordance with this Section 12(b), the District shall pay to the HRA, as liquidated damages, that portion of the Additional Rent as shall then remain unpaid for the remainder of the term under the Lease (the "Liquidated Damages Amount"), as follows: (i) subject to (ii) below, the District shall

continue, notwithstanding such termination, to pay all remaining scheduled payments of Additional Rent in accordance with the terms of the Lease; and (ii) upon the occurrence, with respect to the HRA's Lease Revenue Bonds, of (A) any mandatory call required under the applicable bond documents, (B) any discretionary call permitted under the applicable bond documents and exercised by the HRA (with not less than one hundred twenty (120) days advance written notice to the District), or (C) any election by the District (with not less than one hundred twenty (120) days advance written notice to the HRA), in lieu of any exercise of a discretionary call by the HRA, to prepay the Liquidated Damages Amount effective as of any discretionary call date permitted under the applicable bond documents, then the District shall pay the then remaining balance of Additional Rent, as calculated in accordance with the terms of the Lease and reduced to present value using a discount rate equal to the Bond Rate. Any termination of this Agreement in accordance with this Section 12(b), shall automatically, and without further notice to any party to this Agreement, result in the collective termination of the Lease and the Use and Operating Agreement.

(c) In the event of any termination of this Agreement, the Lease and the Use and Operating Agreement in accordance with Section 12(b) above, payment by the District to the HRA of the Liquidated Damages Amount shall without duplication be the sole and exclusive remedy for the HRA and the City for such termination, and the HRA and the City hereby waive any and all rights to specific performance, damages, or any other remedy available in equity or in law in connection with any such termination.

13. GENERAL PROVISIONS.

(a) Any notice required or permitted to be sent hereunder shall be in writing Federal Express, courier delivery, facsimile transmission, or U.S. Mail to the following addresses, or to such other address as may be specified from time to time in writing by the District, the HRA or the City:

If to the District:

Superintendent
Independent School District No. 270
1001 State Highway 7
Hopkins, MN 55305

If to the HRA:

HRA Director
City of Golden Valley
7800 Golden Valley Road
Golden Valley, MN 55427

If to the City:

City Manager
City of Golden Valley
7800 Golden Valley Road
Golden Valley, MN 55427

Notice shall be deemed effective upon the expiration of one (1) day following mailing via Federal Express delivery; upon receipt in the case of courier delivery; upon the expiration of one (1) business day following the date of transmission if transmitted by facsimile; and upon the expiration of three (3) days following mailing in the case of mailing via U.S. Mail.

(b) The District, the HRA and the City shall execute and deliver such other or further documents or agreements, including without limitation any amendment or restatement hereof, and take such other or further actions, as either party may reasonably request, in order to correct scrivener's errors or defects in this Agreement, or to otherwise carry out the provisions and intent hereof.

(c) Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other parties.

(d) The parties agree that they will review this Agreement annually to determine if any changes are appropriate; provided, however, notwithstanding the foregoing, this Agreement may be amended only in a writing duly executed by all of the parties hereto.

(e) All of the covenants, conditions and agreements herein contained shall extend to, be binding upon, and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

(f) If any provisions of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect.

(g) This Agreement shall in all respects be governed by and interpreted under the laws of the State of Minnesota.

(h) This Agreement may be executed in any number of counterparts, all of which shall constitute a single Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto effective as the day and year first set forth above.

INDEPENDENT SCHOOL DISTRICT NO. 270

By _____
Its Board Chair

And _____
Its Superintendent

THE HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF GOLDEN VALLEY

By _____

Its _____

By _____

Its _____

THE CITY OF GOLDEN VALLEY

By _____

Its _____

By _____

Its _____

EXHIBIT "A"
The Center

EXHIBIT "B"
The District Parcel

SCHEDULE I

The schedule for the use of the Gymnasium shall be governed by the Use and Operating Agreement aligned with the priorities and preempted use by District as outlined below:

School Year

A. Monday - Friday

Gym A 6:00 AM - 5:30 PM School Priority

Gym B 6:00 AM - 6:00 PM School Priority

Gym A 5:30 PM - 10:00 PM City Priority

Gym B 6:00 PM - 10:00 PM City Priority

B. Saturdays/Sundays

Gyms A & B 8:00 AM - 10:00 PM City Priority

C. Holidays and non-school days

Gym B 6:30 AM - 6:00 PM School Priority

Gym B 6:00 PM - 10:00 PM City Priority

Gym A 8:00 AM - 10:00 PM City Priority

Summer Break

A. Monday - Friday

Gym B 6:30 AM - 6:00 PM School Priority

Gym A 8:00 AM - 6:00 PM City Priority

B. Saturdays/Sundays

Gyms A & B 8:00 AM - 6:00 PM City Priority

Preempted use by District

A. The District may preempt the City’s weekday evening use of the gymnasiums by scheduling such use by May 1 for the following school year. Such preemptions shall not exceed 18 preemptions per school year (in any event not to exceed four (4) preemptions per month (excluding the month of September during each school year)) as defined by the official school calendar including workshop weeks. Additional preempted dates may be possible based on City approval which shall not be unreasonably withheld. In the case of any dispute relating to the reasonableness of any approval withheld by the City, such disputes shall be resolved by the Operating Committee. All requests for preemption dates not on the original schedule developed by May 1 of the preceding year must be made at least 21 days in advance. However, the City may agree to a shorter period of time for unexpected events.

B. To assist with continuity of City sponsored programs on nights the District has requested a preemption, School District events that do not require use of the gymnasiums and for which the District determines that parking for both City and School District activities can be accommodated, City programs may continue as scheduled. The details of such accommodations shall be outlined in the Use and Operating Agreement agreed to by the Operations Committee.

C. The remaining space in the adjoining building will be available for City use in accordance with District Board Policy -KG, "Community Use of Facilities".