

MEMORANDUM NO. M16-023

Date: February 12, 2016
To: A&F Committee
From: Dean Bostrom, Executive Director
Craig Talsma, Deputy Director/Director A&F
Mike Kies, Director Recreation & Facilities
Subject: Facility Use Agreement with Township High School District 211

Background

Township High School District 211 recently purchased the former Barrington Orthopedic building at 1030 W. Higgins, located just east of Hoffman Estates High School. District 211 renamed the building the Higgins Educational Center. The Higgins Educational Center serves two primary purposes for District 211. On school days during typical school hours, the building hosts District 211 students with special needs through a variety of special education programs and services. On weekday evenings (4-8pm) the facility hosts a variety of service providers to help disadvantaged community members overcome challenges with language, basic health and wellness, and educational and social services.

The Higgins Educational Center opened in August of 2015 for student programs and services and has in recent months begun to offer community-based services during non-school hours. The community-based services are primarily offered in cooperation with local governmental entities and health and social service agencies. Existing Facility Use Agreements have been approved or are in the approval process with the Village of Hoffman Estates, Schaumburg Township, Harper College, Kenneth Young Center, Alexian Bros., Bridge Youth & Family Services and WINGS. The Facility Use Agreement for each agency follows the same template drafted by District 211's legal counsel.

Implications

The park district's 2016 budget includes \$2,500 for programming at the Higgins Education Center. Through the Facility Use Agreement the park district will be looking to offer recreation and health/fitness classes. The classes would be offered at fees equivalent to or less than the direct cost of providing class. The \$2,500 budget was approved to be used to supplement direct program costs that are not recuperated through the program fees paid. Initially the park district will be offering a Zumba class weekly and plans to expand offerings based on identified needs and wants.

Recommendation

HEPD's legal council has approved the agreement minus one outstanding issue related to Indemnification. However, it is anticipated that the lone outstanding issue with the agreement from the attorneys' perspective will be resolved prior to the A&F Committee meeting. Staff will report any changes to the agreement recommended by legal counsel at the A&F Committee meeting.

The A&F Committee recommends the park board approve the Facility Use Agreement between Township High School District 211 and HEPD subject to legal council's approval.

Intergovernmental Agreement: Higgins Education Center

**FACILITY USE AGREEMENT BETWEEN TOWNSHIP HIGH SCHOOL DISTRICT
NO. 211 AND HOFFMAN ESTATES PARK DISTRICT**

The following Agreement is between the Board of Education of Township High School District No. 211, Cook County, Illinois, an Illinois school district (the “School District”), and HOFFMAN ESTATES PARK DISTRICT, an Illinois unit of local government (the “Facility User”). Individually, the School District and Facility User shall be referred to as a “Party” and collectively, as “the Parties.”

WHEREAS, Article VII, Section 10 of the 1970 Constitution of the State of Illinois authorizes units of local government and school districts to contract to obtain or share services and to exercise, combine or transfer any power or function, in any manner not prohibited by law or by ordinance; and

WHEREAS, the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1, *et seq.* provides additional powers to units of local government and school districts that work together; and

WHEREAS, the School District is the owner for the property located at 1030 W. Higgins Road in Hoffman Estates, Illinois, consisting of a two-story office building with approximately 26,355 square feet of gross building area situated on a 60,548 square foot or 1.39 acre parcel (the “Subject Property”) which it uses for administrative and educational purposes; and

WHEREAS, the School District currently has approximately 1,000 square feet of space located on the first floor of the Subject Property, as more fully described and depicted in Exhibit A to this Agreement, attached hereto and incorporated herein by reference (the “Facilities”), that it does not need for its administrative or educational purposes during the hours specified in this Agreement and which it desires to make available for temporary recreational use to the Facility User in order to provide a health, recreation, and fitness use for the benefit of the residents and taxpayers in the community; and

WHEREAS, the Facility User desires to provide community-based health, recreation, and fitness care screenings and services at the Subject Property in a manner that will compliment and not interfere with the School District’s use of the Subject Property (the “Services”); and

WHEREAS, the School District has determined that the Facilities are available and not currently necessary for its administrative and educational purposes during the specified hours and that it desires to allow the Facility User to use the Facilities in accordance with this Agreement.

NOW THEREFORE, for and in consideration of the mutual promises recited herein, the Parties agree as follows:

I. Use of Facility:

A. Available Space within the Subject Property. The Facility User shall have access to and the use of the Facility between the hours of 4:00PM and 8:00PM on days when the facility is open.

B. Term. The Term of this Agreement shall commence on March 1, 2016 (the “Commencement Date”) and shall extend for a period of 1 year with an option for the Parties to extend the Term for additional one (1) year periods thereafter upon the mutual written agreement of the Parties.

C. In Kind Compensation. In exchange for its use of the Facilities, the Facility User shall provide the School District certain services at fees equivalent to or less than the direct cost of providing services, which shall be considered compensation for maintenance and depreciation of the Facilities. These services will include health and/or fitness related classes. The School District shall provide the Facility User with reasonable advance written notice of the services it wishes to receive and the dates and times it wishes to receive them. The Facility User shall exercise commercially reasonable efforts to accommodate the School District’s requests.

D. Health and Safety Issues. In the event of emergency, safety issue, or failure to maintain insurance required by this Agreement, or any other condition that constitutes a substantial and immediate threat to the health or safety of students, employees, or others at the School District, as determined by the School District in its sole discretion, the School District may immediately suspend the Facility User’s activities hereunder until such condition has been remedied to the School District’s satisfaction.

E. No Drugs or Alcohol. Illegal drugs and alcohol are not permitted on the Subject Property.

F. Compliance with Laws and Policies. The Facility User shall comply with all applicable federal, State, and local laws related to its use of the Facilities and the Subject Property and shall comply with all School District policies and procedures. The School District shall notify the Facility User of any changes to School District policies and procedures that become effective after this Agreement’s Effective Date and implicate the Facilities or the Subject Property, including after the Effective Date of any renewal terms as provided for in Section I(B) of this Agreement.

G. Maintenance of the Facilities. The Facility User shall at all times maintain the Facilities in in a clean, safe and orderly manner and in full compliance with all applicable federal, State, county and local laws and regulations, including all environmental laws, rules and regulations. The Facility User shall be responsible for the cost of repair and/or replacement of any damage to the Facilities, including fixtures and furnishings, which occurs as a result of or in connection with the Facility User’s or its employees’ or agents’ use of the Facilities, normal wear and tear and damages by fire, casualty or other insured loss excepted. If the Facility User does not repair damages it caused to the Facilities, the School District may repair the damage at the Facility User’s expense. The Facility User shall reimburse the School District for any

reasonable, documented, and verifiable costs within fourteen (14) days after the School District provides a written invoice for such costs to the Facility User.

H. No Improvements. The Facility User shall not modify, alter, or place permanent fixtures or improvements upon the Facilities.

I. Supervision. The Facility User shall be solely responsible, at its own expense, for providing adequate supervision at all times in connection with its use of the Facilities. The Facility User acknowledges and assumes complete responsibility for its employees and agents used to supervise its activities and services. The School acknowledges that the degree and scope of supervision required shall be subject to the discretion of the Facility User.

J. Background Checks. The Facility User shall conduct, at its own cost and expense, criminal background checks in accordance with Section 10-21.9 of the Illinois School Code, 105 ILCS 5/10-21.9, of all of its employees and agents providing Services on the on the Subject Property. The Facility User shall not send to the Facilities, or allow to interact with students, any employee or agent (1) for whom the Facility User has not received the completed results of the criminal background check and (2) whose criminal background check reveals convictions that would prohibit employment by the School District under Section 10-21.9 of the Illinois School Code or other criminal conduct or inappropriate behavior which reasonably calls into question such individual's fitness to work near children. Additionally, at least annually, the Facility User shall contact the local law enforcement authority where each employee or agent that provides Services at the Facilities resides to determine if the employee or agent is on the list of registered felons who have committed child sex offenses.

II. Miscellaneous Provisions.

A. Indemnification. The School District and the Facility User each agree to mutually indemnify, defend and hold harmless the other party and their respective board members, employees, and agents from all third party claims, causes of action, damages, whether to person (including death) or property, costs (including reasonable attorneys' fees), and losses suffered by third parties (collectively "Loss") to the extent the Loss arises out of the acts or omissions of the indemnifying party; provided that where the claim fails to allege, or the Parties cannot identify, the act or omission resulting in the Loss, the School District shall be the indemnifying party. The Parties agree that the foregoing allocation of risk is solely an administrative matter between the Parties and does not represent a waiver of any immunities and defenses available in statute or common law nor create or enhance any duties to the public or any member thereof. Moreover, the Parties agree that the manner in which each Party performs the activities described in this Agreement is a matter within such Party's discretion. The covenants of this Section shall survive the expiration or termination of this Agreement.

B. Insurance. During the term of this Agreement, the Facility User, at its sole cost and expense, and for the benefit of the School District, shall carry and maintain, with companies and in forms reasonably satisfactory to the School District, Commercial General Liability insurance covering bodily injury, personal injury, and property damage insuring against all liability of the Facility User arising out of its use of the Facility and/or Property, with a minimum combined single limit of Two Million (\$2,000,000.00) dollars per occurrence. Such policy shall

name the School District, its Board, Board members, employees, agents and successors as an additional insured on a primary and non-contributory basis with a waiver of subrogation in favor of the School District. In addition, the Facility User shall comply with the State Worker's Compensation Law and shall provide for the payment of worker's compensation to its employees in the manner and to the extent required by such law. The Facility User shall provide evidence of workers compensation insurance coverage with statutory benefits and \$500,000 of employers liability limit. The workers compensation coverage shall include a waiver of subrogation. The Facility User shall provide the School District with certificates of insurance and/or copies of policies reasonably acceptable to the School District evidencing the existence of the coverage described above, including form and deductibles, during the duration of this Agreement. The failure to provide acceptable insurance shall be deemed a breach of this Agreement entitling the School District to terminate this Agreement immediately. All policies of insurance shall provide by endorsement that no coverage may be canceled, terminated, or reduced by the insuring company without the insuring company having first given at least 30 days prior written notice to the School District.

C. Waiver of Claims. Except to the extent prohibited by law and for any claim arising out of, relating to or connected with any breach of this Agreement, the School District shall not be liable, and the Facility User waives all claims against the School District for damages to person or property sustained by the Facility User resulting from its use of the Facilities, or any equipment, furniture, fixtures, or appurtenances thereto becoming out of repair, resulting from any accident in or about the Facilities, or resulting directly or indirectly from any act or neglect of any person on the Facilities. All personal property belonging to the Facility User on the Subject Property shall be there at the risk of the Facility User. The School District shall not be liable for any damage thereto or the theft or misappropriation thereof. The Facility User shall be limited to its own insurance coverages to pay for damage to its property or fixtures and hereby holds harmless and releases the School District from any damage or claim of damage to the Facility User's property or fixtures.

D. No Waiver of Tort Immunity Defenses. Nothing contained in this Agreement, or in any other provision of this Agreement, is intended to constitute nor shall constitute a waiver of the defenses available to the School District or the Facility User under the Illinois Local Governmental and Governmental Employees Tort Immunity Act or any other federal, state, or local law, rule or regulation, with respect to claims by third parties. Any allocation of responsibilities, duties or liabilities between the parties is solely for their respective administrative convenience and is not intended to create, expand or diminish any duties to third parties.

E. Taxes. If, as a result of this Agreement, the Subject Property is threatened with the loss of its tax exempt status, to the extent the Subject Property has tax exempt status, the School District, in its sole discretion, may immediately terminate this Agreement and the Facility User's activities hereunder without the School District incurring any damages or liability to the Facility User. If any portion of the Subject Property becomes subject to taxation as result of the Facility User's use of the Subject Property or the Facility User's actions under this Agreement, the Facility User shall be responsible for the payment of any taxes assessed and such taxes shall be payable at the time said taxes are due. In such event, the School District shall have the right to challenge, at the Facility User's expense, any loss of tax exempt status of the Subject Property. In the event that

the Facility User fails to pay the taxes when due, the School District may, at its sole option, pay the taxes and the Facility User shall be liable, in addition to any other remedies available to the School District, to the School District for all costs and expenses, including, but not limited to, reasonable legal fees, incurred by the School District in paying the delinquent taxes. The covenants of this Section shall survive the expiration or termination of this Agreement.

F. No Assignment. The Parties may not assign any rights, duties, or obligations, under this Agreement without the prior express written consent of the Parties.

G. Entire Agreement. This Agreement shall constitute the entire agreement of the Parties hereto with respect to the Facilities and activities hereunder and supersedes any and all prior agreements and understandings, whether written or oral, formal or informal. This Agreement may not be amended except by means of a written document signed by authorized representatives of the Parties.

H. Termination. Either party may terminate this Agreement for any reason with or without cause after providing thirty (30) days written notice to the other party of its intention to terminate the Agreement.

I. Notice. All notices required or permitted by this Agreement must be in writing and delivered personally or sent by certified mail, return receipt requested to the respective party's mailing address listed below. Either party may specify a different address to receive notices by providing a written directive given in accordance with this Section.

J. Effective Date. This Agreement shall be deemed dated and become effective on the date the last of the Parties signs as set forth below the signature of their duly authorized representatives.

K. Recitals. This Agreement's recitals are incorporated as though fully set forth herein.

L. Freedom of Information Act Compliance. The Parties agree to maintain, without charge, all records and documents concerning or relating to this Agreement and performance thereunder in accordance with the Freedom of Information Act ("FOIA") 5 ILCS 140/1 *et seq.* Upon a Party's request, the other Party shall produce all records requested by the requesting Party within the timeframe requested, and if additional time is needed to compile the requested records, the Party producing the records shall promptly notify the requesting Party. In the event that either Party is found to have not complied with the Freedom of Information Act due to the other Party's failure to produce documents or otherwise appropriately respond to a request under the Act, then the Party failing to produce and/or respond shall indemnify and hold harmless the other Party, and pay all amounts determined to be due, including, but not limited to, fines, costs, attorneys' fees and penalties.

M. Authorization. The individuals executing this Agreement warrant that they have been lawfully authorized to execute and enter into this Agreement on behalf of the Facility User, the School District, and the owner(s) of the Subject Property.

N. Severability and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either Party to enforce against the other Party any term or provision of this Agreement shall be deemed not to be a waiver of such Party's right to enforce against the other Party the same or any other such term or provision.

O. Enforceability and No Third-Party Beneficiaries. The covenants and agreements contained herein shall be binding upon and inure to the sole benefit of the successors and assigns of the respective Parties hereto. Nothing herein, express or implied, is intended to or shall confer upon any other person, entity, company, or organization, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

P. Governing Law and Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Illinois. The venue for all disputes arising out of, under, or related to these Terms shall be the Circuit Court of Cook County.

IN WITNESS WHEREOF, the undersigned Parties have caused this Agreement to be executed by their duly designated officials or officers on the dates below.

SCHOOL DISTRICT:

BOARD OF EDUCATION, TOWNSHIP HIGH SCHOOL DISTRICT NO. 211, Cook County, Illinois,

By: _____
President

Attest: _____
Secretary

Address:
Superintendent
1750 S. Roselle Rd.
Palatine, IL 60067

FACILITY USER:

HOFFMAN ESTATES PARK DISTRICT, an Illinois not-for-profit corporation,

By: _____
President

Attest: _____
Secretary

Address:
Executive Director
1685 W Higgins Rd.
Hoffman Estates, IL 60169

EXHIBIT A

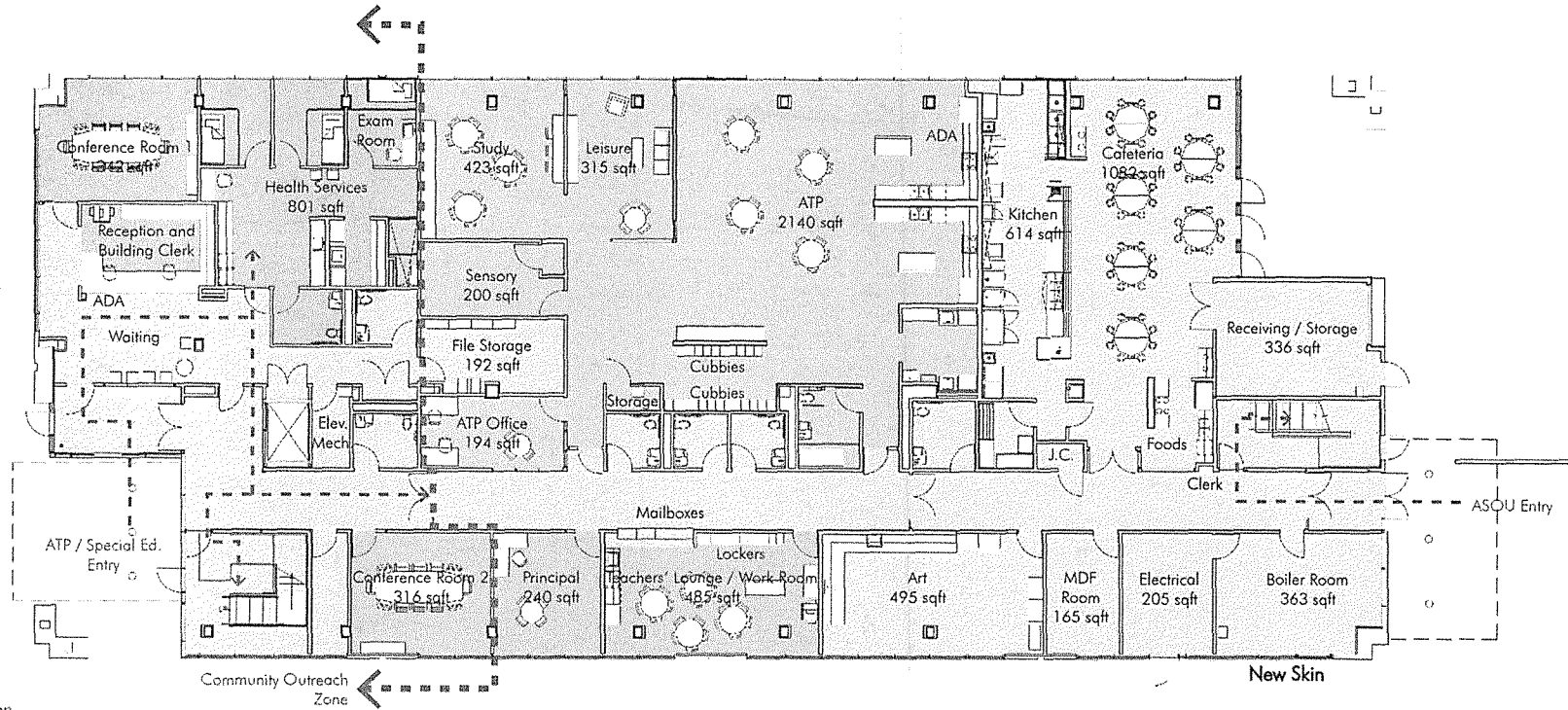
Description of Areas/Rooms to be used by THE FACILITY USER

The Facilities include:

4844-1693-0093, v. 1

DRAFT

EXHIBIT A



1030 West Higgins Remodeling
 Township High School District 211
 Project No. 14089

First Floor
 Scale: 1/16" = 1'
 November 24, 2014