

WILLIAMS WELLNESS CENTER
28E AGREEMENT

THIS AGREEMENT made and entered into the 1 day of December, 2023, by and between OELWEIN COMMUNITY SCHOOL DISTRICT (hereinafter referred to as ‘District’), and CITY OF OELWEIN, IOWA (hereinafter referred to as “City”); and GREATER OELWEIN AREA CHARITABLE FOUNDATION, INC. (hereinafter referred to as ‘Foundation’) (collectively the “Parties”):

WHEREAS, District is a school corporation organized and existing under laws of the State of Iowa and is a public agency as defined in Iowa Code Chapter 28E;

WHEREAS, City is a municipal corporation organized and existing under the laws of the State of Iowa and is a public agency as defined in Iowa Code Chapter 28E;

WHEREAS, Foundation is an Iowa non-profit corporation organized and existing under the laws of the State of Iowa and is a private agency as defined in Iowa Code Chapter 28E;

WHEREAS, public agencies may enter into an agreement with private agencies for joint and cooperative action pursuant to Iowa Code Chapter 28E; and

WHEREAS, the District may authorize the use of its facilities for community recreational activities under Iowa Code § 297.9; and

WHEREAS, Parties find that joint and cooperative action will continue to be to their mutual advantage and will promote more efficient and expanded use of school buildings and equipment as contemplated by Iowa Code § 276.2; and

WHEREAS, District and Foundation have previously entered into agreements, under which the District agreed to lease land to Foundation on which the Foundation obtained financing to construct certain improvements (“Wellness Center”); and

WHEREAS, District and Foundation are willing to share the Wellness Center for community programs;

WHEREAS, District, City and Foundation are willing to accept such a shared use agreement to use the Wellness Center; and

WHEREAS, Parties believe that an agreement pursuant to Chapter 28E of the Iowa Code should be entered into with regard to the use of such land and improvements, which agreement will be to their mutual advantage.

WHEREAS, the District, City and Foundation previously entered into a 28E Agreement dated

August 19, 2002 and at Paragraph 28 of said 28E Agreement authority is granted to the parties to jointly and mutually modify said 28E Agreement; and

WHEREAS, the District, City, and Foundation agree it is in their mutual best interests to revoke the August 19, 2002 28E Agreement in its entirety and enter into this new 28E Agreement to better clarify the rights and responsibilities of all Parties.

NOW, THEREFORE, the District, City, and Foundation agree as follows:

1. Duration of Agreement. The duration of this Agreement shall be for an initial term of ten (10) years, commencing with the date of filing of this Agreement with the Iowa Secretary of State in accordance with Iowa Code 28E.8. This Agreement shall automatically renew for an additional five (5) year term unless either party gives written notice to the others of their intent not to renew the Agreement at least 12 months prior to the end of the initial ten (10) year term or any subsequent five (5) year term.

2. Purpose. The purpose of this Agreement is to facilitate the joint exercise of the parties' respective powers to fund, construct, operate, maintain, and share in the use of a recreation and wellness center for the benefit of the District's students and District residents, subject to the terms and conditions set forth herein.

3. Administration.

A. No Separate Entity. No separate legal or administrative entity shall be created for the governance or administration of the terms or subject matter of this Agreement.

B. Ordinary Administration. Except for certain matters specified herein, this Agreement shall be administered on a day-to-day basis by the Superintendent, or the Superintendent's designee, on behalf of the District, the City's Mayor, or Mayor's Designee, on behalf of the City, and the Treasurer/Secretary, or the Treasurer/Secretary's Designee on behalf of the Foundation.

C. Joint Governing Council. Certain matters, as specified in this Agreement, will be decided by a Wellness Center Advisory Committee (the "Advisory Committee").

i. Composition. The Advisory Committee shall include six (6) members consisting of: 1) three representatives of the District; 2) three representatives of the City; and 3) three representatives from the Foundation. Each Party shall select its own representatives; it is not required that they be elected representatives or employees

ii. Responsibilities. The Advisory Committee shall meet biannually and appoint a chairperson. The meetings shall be open to the public and minutes shall be taken and shared with all Parties. The Advisory Committee shall collaborate and communicate on the operation of the Wellness Center, including the resolution of disputes arising under this Agreement.

4. Property.

A. Wellness Center. The Wellness Center, located at 317 8th Ave SE, includes:

- i. Multi-purpose room (gym, track, and associated space)
- ii. Racquetball Court
- iii. Community Weight Room (formerly MercyOne Therapy)
- iv. Exercise Equipment Room(s)
- v. Public Restroom (east hallway – WPAC)
- vi. Common areas including, but not limited to, parking lots, service, and access driveway, sidewalks, hallways, restrooms, storage areas, etc. so long as use is in accordance with the terms of this Agreement

B. Furniture and Equipment. The City shall provide, pay for, and insure all furniture and equipment for the Wellness Center that are necessary and appropriate to operate the Wellness Center as a recreation and wellness center. All furniture or equipment provided by the City shall be documented, in detail, on a separately maintained manifest. The City shall retain ownership over all furniture and equipment documented on the manifest and shall be entitled to remove the same upon termination or expiration of this Agreement. City shall repair any damage to the Wellness Center resulting from the installation or removal of such property. If City fails to remove its property from the Wellness Center upon termination of this Agreement for any reason, the District may, at its option, retain such property, or remove and dispose of said property without liability to City. City agrees to pay District, upon demand, for any and all expenses incurred in the removal and disposal, including storage charges and attorney fees.

5. Use of the Wellness Center

A. Joint Use

The parties agree that the City's and District's right to occupy and use the Wellness Center is not exclusive, it being the intent of the parties that the Wellness Center is to be shared and jointly used by the public and by public students, faculty, and staff respectively. It is the intent of the parties to mutually run a community wellness center for the benefit of the Oelwein community.

In those instances where the Wellness Center will be used simultaneously by the City and the District, the Schedule shall be published and communicated to members/citizens in places that are easily accessible to all.

The City shall keep and maintain records of actual usage by each Party. The City shall provide such records to the District on a monthly basis. Said records will be deemed approved by the District if not objected to within ten days of receipt.

The normal hours of operation of the Wellness Center shall be determined jointly by the District and City. The use of any portion of the Wellness Center by the City or the District outside of

said normal hours of operation shall be deemed to be exclusive use by that party, unless its use is shared by the parties during such times. The City may provide, but shall be required to provide, general supervisory or custodial services during exclusive District use of the Wellness Center when such use occurs outside of the normal operating hours.

B. Development of Schedule for Use.

Beginning no later than June 1 of each year during the terms of this Agreement, a representative of the City and District shall meet to develop a schedule for use of the Wellness Center for the next fiscal year prior to July 1. Representatives of the City and District shall also prepare a Handbook further delineating the rights and obligations of the parties for day-to-day use of the Wellness Center, which shall be reviewed annually with the schedule. If the parties are unable to come to an agreement on a joint use schedule and Handbook, each party shall submit their proposals to the Advisory Committee which shall make a final determination.

C. Restrictions on Use. The parties shall not use, or permit the use of, the Wellness Center for any purpose which would adversely affect the value or character of the Wellness Center or cause the Wellness Center to lose exempt status for real estate tax purposes. No party shall, at any time during the Agreement, conduct or permit any activities, program, or practices on the premises which shall violate any federal or state constitutional, regulatory, or statutory provisions, or which would change, jeopardize, or prevent the Foundation's status as a charitable institution under Iowa law or as a 501(c)(2) non-profit institution under Federal law.

6. Operation, Maintenance, and Repair of the Wellness Center

A. Duties of the City, the City Shall:

- i. Act as the fiscal agent of the Community Wellness Center
- ii. Set the annual budget by December 1 for the following fiscal year
- iii. Set, advertise, and collect annual membership fees
- iv. Set, advertise, and collect facility rental rates and usage
- v. Reimburse the District for actual costs incurred in the daily operations and management of the Wellness Center including: Manager, Assistant Manager, Hourly Staff, Custodial, Course Instructors, supplies, and other costs associated with daily operations on a quarterly basis
- vi. Share 50% of the cost of major updates, repairs, and maintenance exceeding \$5,000
- vii. Provide three delegates to the Advisory Committee
- viii. Engage in interest-based negotiation and problem-solving when working through disagreements with other parties
- ix. Provide Wellness Center Management Software to the District
- x. Provide District with Data and Analytics on a quarterly basis about fiscal and usage performance of the Wellness Center

- xi. Pay the Foundation a contribution of \$10,000 annually to be kept in an interest-bearing account to be utilized for major capital expenditures to be named in the future.

B. Duties of the District, the District Shall:

- i. Provide direct supervision of the facility and all of its parts
- ii. Act as the Human Resources of the Wellness Center, including all hiring, holding all employment contracts, completing annual evaluations, and terminating employment contracts when necessary
- iii. Provide operations of the Wellness Center, not to exceed the City's annual fiscal budget without prior written permission
- iv. Negotiate salaries, benefits, and wages in good faith effort to correspond with the City's annual fiscal budget targets
- v. Set hours of operation, staff hours, and manage 24-hour access and security systems
- vi. Provide normal and appropriate custodial services based on usage
- vii. Invoice the City quarterly for all costs incurred to provide: Manager, Assistant Manager, Hourly Staff, Custodial, Course Instructors, supplies, and other costs associated with daily operation
- viii. Provide regular maintenance to the building
- ix. Provide utilities for the Wellness Center, including water, electricity, gas, and telephone
- x. Community with the City regarding the need for major updates, repairs, and maintenance exceeding \$5,000 and share 50% of the cost
- xi. Engage in interest-based negotiation and problem solving when working through disagreements with other parties
- xii. Agree to a transitional hiring of the current Manager and Assistant Manager for the 2025 Fiscal/Contract Year
- xiii. Pay the Foundation a contribution of \$10,000 to be kept in an interest-bearing account to be utilized for major capital expenditures to be named in the future.
- xiv. Provide three delegates to the Advisory Committee

C. Duties of the Foundation, the Foundation Shall:

- i. Provide the City and District use of the Wellness Center at no additional cost.
- ii. Collect funds from the District and City to maintain a Capital Projects account for major expansion or renovations of the Wellness Center
- iii. Provide the City and District fund balances of the shared Capital Projects account upon their request and annually for auditing purposes

7. Right to Alter and Improve. The Parties may make changes to the interior of the Wellness Center, subject to the following conditions:

- A. No change or alteration which might impair the structural soundness or diminish the value of the building shall be made.

- B. No changes or alternation to the Wellness Center shall be made without the mutual prior consent of the City, District, and Foundation.
- C. Any improvement to the building or any part thereof and any replacement of any fixture shall become the absolute property of the District upon termination of this Agreement without payment of any kind.
- D. The cost of any approved alteration or improvement shall be at the expense of the Party wanting the alteration or improvement, unless otherwise agreed upon by the Parties.
- E. All alterations or improvements shall be completed in accordance with any applicable competitive bidding laws.

8. Insurance

A. Workers' Compensation, Employer's Liability. All times during the Term, all Parties shall maintain Workers' Compensation Insurance covering their respective employees as required by law. Both parties shall endorse their Workers' Compensation policies to add a Waiver of Subrogation in favor of the other party.

B. Commercial General Liability. At all times during the term of this Agreement, the City shall maintain a Commercial General Liability insurance policy naming the District and Foundation as additional insureds for bodily injury and property damage, including loss of use thereof, in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. These policies shall include contractual liability coverage. Such policies shall cover the Wellness Center, shall be issued by insurance companies and in forms satisfactory to the insured, shall provide for at least thirty (30) days' notice to the District and Foundation before cancellation.

B. Fire or Other Casualty Loss. If all or any part of the Wellness Center is damaged or destroyed by fire or other casualty, District shall repair and rebuild the structure with reasonable diligence. All insurance proceeds received by the District pursuant to the provisions of this Agreement shall be payable to District and shall be held in trust and applied by District to the payment of such restoration, as such restoration progresses.

C. Fire or Casualty Insurance. District shall insure the Wellness Center and City and District shall pay the insurance premiums attributable to their respective use of the Wellness Center as part of the Operations and Maintenance Costs as follows:

- i. For loss or damage by fire and such other risks as may be included in the broadest form of extended coverage insurance from time to time available in amounts sufficient to prevent District or City from becoming a co-insurer within the terms of the applicable policies, and in any event, in an amount not less than 80% of the full insurable value.
- ii. For loss or damage by explosion of steam boilers, pressure vessels, or similar apparatus in the Wellness Center in such limits with respect to

any one accident as may be reasonably desired by the District from time to time.

The term “full insurable value” shall mean the actual replacement cost, excluding foundation and excavation costs. All such insurance shall be obtained from issues of recognized responsibility licensed to do business in the State of Iowa. All policies shall name District, City and Foundation as an additional insured. Each party shall be furnished with a copy of each policy specified under this Agreement. To the extent obtainable, all policies shall contain an agreement by the insurer that such policies shall not be canceled except upon thirty (30) days written notice to each party.

D. Waiver of Subrogation Rights. Each of the parties hereby releases the other from any claim for recovery for any loss or damage to any of its property or for any liability which is insured under valid and collectible insurance policies to the extent of any recovery collectible under such insurance. It is further agreed that this waiver applies only when permitted by the applicable policy of insurance.

E. Delivery of Insurance Certificates. Upon the Effective Date and at each policy renewal date, each party shall furnish to the other parties an insurance certificate or renewal certificate evidencing all insurance required to be carried by that party in accordance with this Agreement.

9. Indemnification. To the extent permitted by law, all parties shall indemnify, defend, and hold harmless the other parties from any and all claims, damages, injuries, demands, settlements, suits, causes of action, and any other claimed damages, including reasonable attorney’s fees, suit fees, and other costs associated therewith, arising out of the negligent actions or omissions of the indemnifying parties employees or agents.

10. Taxes. Foundation is exempt from either real estate or income taxes under the laws of Iowa and under Federal law, and the parties intent to maintain that exemption. However, in the event that such exemption is wholly or partially lost, or in the event of public charges or charges in lieu of taxes, Foundation shall pay, in addition to other amounts provided in this Agreement as they accrue in any fiscal year, all taxes, assessments and other public charges or charges in lieu of taxes levied upon or assessed against District or the Facility or the property on which it is located, arising by reason of the Foundation’s occupancy, use, or possession of the Williams Wellness Center facility, or the business carried on therein, which are hereinafter collectively referred to as “taxes.” District shall have no obligation for payment of taxes that are referred to above. Foundation represents and warrants that it is an organization described in section 501(c)(3) of the Internal Revenue Code and exempt from federal income taxation under Section 501(a) of the Internal Revenue code, or corresponding provisions or prior law, as set forth in a determination letter or letters or other notification issued by the Internal Revenue Service to that effect. Foundation shall be in compliance with the terms, conditions and limitations, if any, in said letter(s), and the facts and circumstances that form the basis of such letter(s), as represented to the Internal Revenue Service, continue substantially to exist and no other material facts or circumstances have arisen which could adversely affect the determination in such letter(s).

Foundation agrees to take all action reasonably necessary to maintain its status as such an organization and its exemption from federal income tax under said Section of the Code or corresponding provisions of future federal income tax laws at all times until the bonds, notes or other evidence of indebtedness have been redeemed. Foundation covenants that there are not proceedings pending, or to Foundation's knowledge threatened in any way which affects Foundation's status as an organization described in section 501(c)(3) of the Internal Revenue Code, or which would subject any income of Foundation to federal income taxation to such extent as would result in the loss of its tax-exempt status under Section 501(a) of the Internal Revenue Code or the loss of the exclusion from gross income of interest on Bonds, Notes, or other evidence of indebtedness for federal income tax purposes under Section 103 of the Internal Revenue Code. Foundation also covenants that it is not, to its knowledge, under examination or audit by the Internal Revenue Service, nor has it received notice, oral or written, from the Internal Revenue Service of a proposed examination or audit thereby, with respect to any fiscal year of the Foundation. Moreover, Foundation agrees not to merge into or consolidate with any other entity or permit any other entity to merge into or consolidate with it if such merger or consolidation will adversely affect the Foundation's status as a corporation under Section 501(c)(3) of the Internal Revenue Code and its exception from taxation pursuant to Section 501(a) of the Internal Revenue Code, or any successor provisions thereto.

11. Non-Competition. The Parties shall not directly or indirectly, permit the development of facilities or programs in the Wellness Center which will compete with those conducted by any of the other Parties to the Agreement.

12. Surrender upon Expiration or Termination. At the expiration of this Agreement, or upon termination of the Agreement, the City and Foundation shall surrender the property in as good condition as it was at the beginning of the term; reasonable use and wear excepted. Any additions or improvements affixed to the property stay with the property. Equipment, furnishings, or furniture provided by the District shall remain with the property.

13. Non-Assignment of Interest under This Agreement. No party may assign its right or responsibilities under this Agreement without prior written consent of the other party in each instance, which consent may be withheld or conditioned in the sole discretion of the consenting party.

14. No Joint Obligation. The obligations of the District, City, and Foundation under this Agreement are several obligations, and are not joint obligations.

15. Modifications of this Agreement. The Parties acknowledge that from time to time it may be to their mutual advantage to modify the terms and conditions of this Agreement. No waiver, change, modification, or amendment to this Agreement shall be binding upon either party unless in writing and signed by all Parties. The waiver by any party to a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that provision or any other provision or condition of this Agreement.

16. Termination Prior to Expirations of Term. This agreement may be terminated prior to the expiration of its term, as follows:

- A. By mutual agreement of the Parties.
- B. By any party for breach of any terms of this Agreement. Termination shall be accomplished by giving written notice to the breaching party specifying the breach and stating that the agreement will be terminated if the breach is not cured within thirty (30) days. Failure to cure the breach within thirty (30) days of receipt of the this notice shall result in automatic termination of this agreement.
- C. Any party may terminate this Agreement for any reason by giving eighteen (18) months notice in writing.
- D. In event of termination, the terminating party shall be relieved of all further obligations or duties beyond the date of termination, but no party shall be relieved of its duties and obligations under this Agreement through the date of termination.
- E. As of the date of termination, sole possession of the premises shall be returned to the District and the other parties shall vacate the premises no later than the date of termination.

17. Notice. All notices, requests, claims, demands and other communications between the parties shall be in writing, and shall be given by delivery in person or by first class, registered or certified mail, postage prepaid. All notices shall be effective upon receipt, if notice is given by delivery in person, or on the fifth day following mailing to the other party at its respective address listed below:

To District:
307 8th Ave. SE
Oelwein, IA 50662

To City:
20 2nd Ave. SW
Oelwein, IA 50662

To Foundation:
3846 Rose Rd.
Oelwein, IA 50662

18. Binding Effect. The terms and conditions of this Agreement shall extend to and be binding upon the successors in interest of the respective parties thereto.

19. Entire Agreement - Amendment. This Agreement contains the entire understanding between the parties and cannot be changed or terminated orally but only by an agreement in writing signed by both parties.

20. Severability. If any provisions of this Agreement are declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.

[Signature Page to Follow]

STATE OF IOWA)
) ss:
COUNTY OF FAYETTE)

On this ____ day of _____, 2024, before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____ and _____ to me personally known, who, being by me duly sworn, did state that they are the Mayor of the City of Oelwein; that no seal has been procured by the City; that said instrument was signed on behalf of the City by authority of its City Council; and that the said City Council President and Mayor as such officers acknowledge the execution of said instrument to be the voluntary act and deed of the City, by it and by them voluntarily executed.

Notary Public in and for the State of Iowa

STATE OF IOWA)
) ss:
COUNTY OF FAYETTE)

On this ____ day of _____, 2024, before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____ and _____ to me personally known, who, being by me duly sworn, did state that they are the Treasurer/Secretary of the Greater Oelwein Area Charitable Foundation, Inc.; that no seal has been procured by the Foundation; that said instrument was signed on behalf of the Foundation by authority of its Board of Directors; and that the said Treasurer/Secretary as such officer acknowledge the execution of said instrument to be the voluntary act and deed of the Foundation, by it and by them voluntarily executed.

Notary Public in and for the State of Iowa