

**MEMORANDUM OF UNDERSTANDING
For the Multi-Sport and Indoor Aquatic Facility**

This Memorandum of Understanding (“MOU”) is entered into on the ___ day of _____, 2021, by and between the City of Norman, Oklahoma, a municipal corporation, the Norman Municipal Authority, a public trust having the City of Norman as its sole beneficiary, the Norman Tax Increment Finance Authority, a public trust having the City of Norman as its sole beneficiary, together referred to herein as the “City”, and Norman Regional Hospital Authority, an Oklahoma Public Trust d/b/a Norman Regional Health System, hereinafter referred to as “NRHS”, for the purpose of developing a contractual relationship related to the construction funding and separate operation of the Sports and Human Performance Center (the “Center”) to be located within the City’s planned Multi-Sport and Indoor Aquatic Facility (the “Facility”).

WHEREAS, Norman voters approved the Norman Forward Quality of Life Projects Sales Tax of 2015, providing a one-half (1/2) percent sales tax dedicated to fund a number of Quality of Life projects, including \$22.5 million for the Facility; and

WHEREAS, the Norman City Council adopted the Norman University North Park Amended and Restated Project Plan (O-1920-24) and the ancillary Amended and Restated Master Operating and Development Agreement (K-1920-82) in November 2019, which together provided for the donation of two (2) acres and the sale of an additional ten (10) acres for the Facility to the City, funding for said purchase of land from existing tax increment revenues, and an additional \$2.7 million to be used as a construction enhancement for the Facility; and

WHEREAS, on June 18, 2020, the City entered into an MOU (K-1920-139) with the Trae Young Foundation, Inc. to provide for additional funding and an ongoing relationship related to the Facility; and

WHEREAS, NRHS intends to participate with the City in the Facility; and

WHEREAS, NRHS has provided space requirements and architectural renderings to FSB Architect and Engineers for the Center to be located within the Facility; and

WHEREAS, on December 1, 2020, the City entered into a purchase and sale agreement (K-2021-65) with University Town Center, LLC to accept the donation of two (2) acres and to purchase ten (10) acres on which the Facility is to be constructed (the “Land”); and

WHEREAS, the City intends to enter into an agreement with GE Johnson Construction Company (the “CM”) for Construction Manager at Risk Services, for which a pre-construction services fee has been determined to be \$85,000, with \$17,000 attributable to the NRHS Leased Premises; and

WHEREAS, once a guaranteed maximum price for the Facility has been determined, an amendment to the City’s contract with the CM will be presented to City Council for approval.

NOW, THEREFORE, BE IT AGREED AMONG THE PARTIES, that each party as indicated by its signature affixed to this MOU, do hereby agree to the following terms to be more fully set forth in a final Lease Agreement (the “Agreement”):

1. Parties to the Agreement: The parties to the Agreement shall include the City of Norman, the Norman Municipal Authority, the Norman Tax Increment Finance Authority, and NRHS.
2. Definitions: The following terms and phrases shall have the meaning provided below:
 - a. “Capital Item” shall mean generally any furniture, fixture, or equipment that costs \$5,000 or more and has an expected life of more than one year; however, it shall not include any furniture, fixture, or equipment installed for the sole benefit of NRHS, including, but not limited to, elevators providing access to the NRHS Leased Premises.
 - b. “City Manager” shall mean the City Manager of the City of Norman or such other City employee as may be designated by the City Manager to provide oversight and implementation of this agreement.
 - c. “Facility” shall mean the various buildings, facilities, and improvements located on the Land.
 - d. “NRHS Leased Premises” shall mean the portion of the Facility, including any improvements therein, that are funded and separately operated by the NRHS, including the Center.
 - e. “Parties” shall mean the City of Norman, the Norman Municipal Authority, the Norman Tax Increment Finance Authority, and NRHS
 - f. “Project Manager” shall mean the Parks and Recreation Director of the City of Norman or such other City employee as may be designated by the Parks and Recreation Director to manage the construction and operation of the Facility.
3. Term of the Agreement: The initial term of the Agreement shall be for at least fifteen (15) years, with an option to renew upon written acceptance of the Parties.
4. Purchase of Land: The City will acquire the Land for the construction of the Facility by separate agreement with the seller.
5. Purpose and Use of Facility: The Facility is to be used primarily as a multi-sport and indoor aquatics facility, to be subsequently formally named, and shall be open and available to the public. The City will provide NRHS space for the construction and separate operation of the Center.
6. Obligations of the Parties during Planning and Construction of Facility:
 - a. NRHS Obligations:
 - i. NRHS will participate in planning and construction meetings when requested by the Project Manager and shall participate in discussions related to the design of the Facility.

- ii. NRHS will provide City with architectural designs and specifications for the construction of the NRHS Leased Premises.
 - iii. NRHS will fund all construction costs, and any design costs incurred by the City's architect for the Facility, attributable to the NRHS Leased Premises; provided that designs and costs for the NRHS Leased Premises are subject to NRHS approval. The process to be followed for processing and paying such invoices will be set forth in the Agreement, except that NRHS agrees to pay \$17,000 for its share of pre-construction services performed by the CM within thirty (30) days of receipt of an invoice for such services. Construction costs and any design costs will be verified by the CM and third party cost estimator secured by NRHS.
 - iv. NRHS will negotiate in good faith with the City to finalize and obtain relevant approvals for the Agreement by March 31, 2021.
 - v. NRHS will attend City Council meetings, meetings of the Board of Park Commissioners, meetings of the Norman Forward Indoor Aquatic and Multi-Sport Facility Ad Hoc Committee, and meetings of the Norman Forward Sales Tax Citizen's Financial Oversight Board when requested by the Project Manager.
 - vi. NRHS will use all reasonable efforts to operate and provide services by the scheduled opening date.
- b. City Obligations:
- i. The City will cause to be prepared construction drawings and specifications that include full build-out construction of the NRHS Leased Premises.
 - ii. The City will negotiate in good faith with NRHS to finalize and obtain relevant approvals for the Agreement by March 31, 2021.
 - iii. The City, or its CM, will prepare, advertise, bid and award contract(s) for the construction of the Facility, inclusive of the NRHS Leased Premises, as described in Section 6(b)(i) herein.
 - iv. The City will ensure that the CM separately accounts for all construction costs attributable to the NRHS Leased Premises. The process to be followed for processing and paying such invoices will be set forth in the Agreement, except that the City will invoice NRHS for its portion of pre-construction services (\$17,000) performed by CM upon approval of this MOU by all parties.
7. Ownership of Assets: NRHS will own all assets in the NRHS Leased Premises, including any additions or modifications permitted to be constructed, provided they are removable. The NRHS Leased Premises are for the sole use of its providers, clients and patients and not available for public use unless authorized by NRHS representative.
8. Subleases: NRHS may sublease and any tenant of NRHS will comply with all contract provisions and the Facility maintains its intended purpose and use.
9. Programming and Services to be Provided:
- a. Orthopedic Patient Care Clinic
 - b. Integrative Health Patient Care Clinic

- c. Nutrition and Demonstration Kitchen
 - d. Physical Therapy
 - e. Athletic Training (Indoor/Outdoor)
 - f. Strength & Conditioning
 - g. Sports Performance
 - h. Sports Performance Research
 - i. Recovery Therapies
 - j. Other related services.
10. Entry: Due to NRHS status as a “Covered Entity” under HIPAA, except in emergency situations, the City, Operator and Operator’s agents, employees, and contractors may not enter the NRHS Leased Premises without at least 24-hours advance notice to NRHS, and NRHS reserves the right at all times to have an NRHS representative accompany Operator and Operator’s agents, employees and contractors into NRHS space.
11. Protection of Rights:
- a. NRHS employment policies must include non-discriminatory provisions in compliance with federal and state laws, rules and regulations, including Title VII of the Civil Rights Act of 1964, and the City’s Civil Rights Ordinance.
 - b. NRHS agrees that it will not discriminate on the basis of race, color, religion, ancestry, national origin, age, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex in furnishing or refusing to furnish, to such person or persons the use of the Leased Premises, including any and all services, privileges, accommodations, and activities thereby. Operator agrees that this non-discrimination requirement will be included in all subcontracts related to the operation of the Facility and to the services provided by the Operator, its employees, agents and tenants.
 - c. If the Facility, or parts of the Facility, is allowed to be rented or leased for civic, cultural or educational purposes of any kind, the rental policies and procedures will require that the Facility be made available for all kinds of civil, cultural, or educational purposes.
12. Confidentiality: For purposes of this section, “protected health information”, or PHI, shall have the meaning defined by the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R Part 160 and Subparts A and E of Part 164 (the “Privacy Standards”), as promulgated by the Department of Health and Human Services pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, as amended. The parties agree that neither the Operator nor its employees, contractors, and agents shall need access to, nor shall they use or disclose, any PHI of NRHS. However, in the event that PHI is disclosed by NRHS or its agents to Operator, its employees, contractors or agents regardless as to whether the disclosure is inadvertent or otherwise. Operator agrees to take reasonable steps to maintain, and require its employees, contractors and agents to maintain, the privacy and confidentiality of such

PHI. The parties agree that the foregoing does not create, and is not intended to create, a “business associate” relationships between the parties as that term is defined by the Privacy Standards.

13. Maintenance: NRHS shall be responsible for all routine maintenance and general repair costs of the facilities and equipment in the NRHS Leased Premises other than Capital Items and shall be responsible for the cost of any and all supplies necessary for NRHS’s business operations within the NRHS Leased Premises.
14. Repairs of Capital Items: The City will repair or replace any Capital Item as defined herein. The parties agree to engage in further discussions regarding ongoing repair and replacement of attached fixtures of the Facility such as HVAC, boilers, pumps, etc. when such repair or replacement is of such a value that it is not considered a Capital Item as defined herein, and agree to include a provision in the final Agreement addressing this issue.
15. Naming Rights: The City retains the naming right to the Facility as a whole. Any proceeds from the sale of such rights, if any, will be used for costs related to the Facility, all of which will be determined by separate agreement between the City and the party seeking naming rights.
16. Exclusive Partnership: NRHS will be the exclusive healthcare partner of the Facility.
17. Marketing and Promotion Rights: NRHS retains the right as the exclusive healthcare partner to:
 - a. The City agrees to include a provision addressing NRHS’s exclusive healthcare partnership and sponsorship in the City’s agreement with the operator/manager of the Facility.
 - b. Provide athletic training services for large tournaments and sporting events
 - c. Display banners and signage within basketball courts, indoor aquatics and other areas of the facility
 - d. Operate a Fuel Nutrition Retail Bar to include medical equipment, clothing, food and drink, provided it does not conflict with clothing and/or concessions provided by the Operator or other Lessees.
 - e. Promote facility and sports and human performance center activities and service using multi-media communication channels
 - f. Host health and wellness events within the Facility
18. Use of the Facility: NRHS may have access to all or any portion of the Facility during or after hours of operation on a first come, first serve basis according to approved Facility Rental/Booking Policies, provided previously scheduled programming or services are not reduced as a result of such booking.
19. Insurance Requirements: NRHS must provide, pay for, and maintain the following types of insurance policies. The City shall be named as additional insureds on all such policies.

- a. Worker's Compensation and Employer's Liability Insurance
- b. Commercial General Liability Insurance
- c. Automobile Liability Insurance, if applicable

The City will maintain appropriate insurance on the Facility property and operations. The City will require the operator/manager of the Facility to maintain appropriate insurance.

20. Collaboration among Partners: NRHS will collaborate with Operator as needed to support Sooner Swim Club, Norman Public Schools, and the Norman Optimist Club use of the Facility.
21. Assignment: NRHS may not assign the Agreement without the prior written consent of the City.
22. Remedies: The Agreement will provide mutually acceptable remedies and applicable damages in the event of default by any Party.
23. Alteration or Changes to the Facility: NRHS may make changes or alterations to the Leased Premises, upon written consent by the City.
24. Termination of Agreement: The Agreement will provide for mutually acceptable terms related to termination of the Agreement.
25. Enforceability of MOU: The MOU constitutes the parties understanding of the terms and conditions of the Agreement at this time and shall constitute the agreement of the parties until such time as a final Agreement is adopted by all parties.

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IN WITNESS WHEREOF, the parties have caused this MOU to be executed and effective as of the date set forth above.

NORMAN REGIONAL HEALTH SYSTEM

BY: Richie Splitt
Richie Splitt, FACHE, President & CEO

CITY OF NORMAN, OKLAHOMA

BY: _____
Mayor

ATTEST: _____
City Clerk

NORMAN MUNICIPAL AUTHORITY

BY: _____
Chairperson

ATTEST: _____
Secretary

NORMAN TAX INCREMENT FINANCE AUTHORITY

BY: _____
Chairperson

ATTEST: _____
Secretary

Reviewed for form and legality on this ___ day of _____, 2020.

Kathryn Walker, City Attorney/General Counsel