

MEMORANDUM OF UNDERSTANDING
For the Lease and Management of 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 Columbus Corporation of Oklahoma City, Inc., an Oklahoma not-for-profit corporation, hereinafter referred to as “Operator”, for the purpose of developing a contractual relationship related to the lease and management of the City’s planned Multi-Sport and Indoor Aquatic 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 a Multi-Sport and Indoor Aquatic Facility (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, in November 2020, after soliciting proposals pursuant to a Request for Proposals related to the operation of the Facility, and subsequent interviews, the City opted to enter into negotiations with Operator, for the ultimate lease and management of 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”).

NOW, THEREFORE, BE IT AGREED AMONG THE PARTIES, that each party as indicated by its signature affixed to this Memorandum of Understanding, do hereby agree to the following terms to be more fully set forth in a final Lease and Management Agreement (the “Agreement”) to be negotiated and approved by mutual agreement of the Parties at a future date:

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 the Columbus Corporation of Oklahoma City, Inc.
2. Definitions: The following terms and phrases shall have the meaning provided below:

- a. “Capital Item” shall mean any furniture, fixture, or equipment that costs \$5,000 or more and has an expected life of more than one year.
 - 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 which are used as the Multi-Sport and Indoor Aquatic Facility. It does not include any portion of the various buildings, facilities, and improvements located on the Land that are funded and separately operated by the Norman Regional Hospital Authority.
 - d. “Leased Premises” shall mean the Land, together with all buildings, fixtures, facilities and other improvements located on or affixed to the Land, with the exception of any such improvements that are funded and separately operated by the Norman Regional Hospital Authority.
 - e. “Parties” shall mean the City of Norman, the Norman Municipal Authority, the Norman Tax Increment Finance Authority, and the Columbus Corporation of Oklahoma City, Inc.
 - f. “Partner” shall mean a business or entity that the Operator has contracted with to provide goods or services to benefit the users of the Facility.
 - g. “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.
 - h. “Subcontractor” shall mean a business or entity that the Operator has contracted with to perform services for the Operator.
 - i. “Sublease” shall mean a lease and/or license granted by the Operator of all or any portion of the Operator’s leasehold estate in the Facility or the Leased Premises.
 - j. “Tenant” shall mean a business or entity that has a sublease with the Operator.
3. Term of the Agreement: The initial term of the Agreement shall be for five (5) 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 Leased Premises: The Leased Premises are to be used 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 lease the Leased Premises, together with all buildings, fixtures, facilities, and other improvements located on or affixed to the Land to Operator in exchange for the Operator operating, managing, and maintaining the Property at no cost to the City. The Parties acknowledge that the City will install signage bearing the name of the Facility pursuant to Paragraph 15 herein. Additionally, the Parties anticipate signage bearing the name of the operator, the details of which will be determined in the Agreement.
 6. Obligations of Operator during Planning and Construction of Facility:

- a. The Operator 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.
 - b. Operator 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.
 - c. Operator will use all reasonable efforts to secure and contract with all Subcontractors, Tenants, and Partners, to be engaged by Operator to manage and operate the Facility by the scheduled opening date.
 - d. Operator will use reasonable efforts to hire, coordinate, and train all employees, volunteers, and subcontractors to be engaged by Operator to manage and operate the Facility once opened.
7. Ownership of Assets: The City will own all assets, including any additions or modifications permitted to be constructed by the Operator that cannot be removed without damage to the Leased Premises, except any data processing programs or other personal property of the Operator. Such data processing program shall not include the data compiled related to users of the Facility, which shall be provided to the City upon the expiration or termination of the Agreement.
8. Subleases: The Operator may sublease the Leased Premises upon written permission of the City Manager so long as Operator and any Tenant of Operator comply with all contract provisions and the Facility maintains its intended purpose and use.
9. Programming and Services to be Provided:
 - a. A list of programs and service categories to be provided at the Facility will be attached to the Agreement. A preliminary list is attached hereto as Exhibit A.
 - b. Operator will be given discretion to determine the specific times, types of classes, and services offered to meet the categorical requirements.
 - c. Operator will be expected to offer additional programs and services based on community and user/participant input.
10. Fees to Users: Operator will be responsible for determining reasonable user fees, which shall include a sliding scale fee schedule based on income levels, available user fee assistance, and other factors, to be reviewed and approved by the City Manager. All user fees shall be retained by the Operator as payment for its management and operation of the Leased Premises.
11. Oversight:
 - a. Operator shall provide any policies related to the operation and use of the Leased Premises to the City Manager for his or her approval.
 - b. Operator will provide quarterly and annual reports to the City setting forth services offered, data related to utilization of such services, financial reports, etc.

- c. The City maintains the right to audit programs, services and financial records of the Operator and any Tenants of the Operator, upon providing advance notice at least five (5) business days of its intent to conduct any audits. Such audits will not disrupt the operation and management of the Facility.

12. Protection of Rights:

- a. The Operator's 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. Operator 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. Operator is required to adopt and implement policies and procedures that prevent and discourage any staff, volunteer, agent, or tenant from discriminating against speech on the basis of viewpoint, including but not limited to proselytizing a particular religion, prohibiting advertising based solely upon the content, or only allowing artwork of one political view.
- d. 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.

13. Maintenance: Operator shall be responsible for all routine maintenance and general repair costs of the facilities and equipment in or on the Leased Premises necessary to operate the Facility and shall be responsible for the cost of any and all supplies necessary for the operation and maintenance of the Facility, subject to Paragraph 14 herein.

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. Operator will be included in the naming process, but without any decision making or veto power.

16. Exclusive Partnership: NRHS will be the exclusive healthcare partner of the Indoor Aquatic and Multi-Sport Facility with the specific details of such and the below areas to be more fully negotiated and clarified in the Final Agreement
17. Rental of the Facility: Operator may rent 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 rental or booking.
18. Insurance Requirements: Operator 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
 - d. Fidelity and Crime Insurance
19. Collaboration among Partners: Operator is strongly encouraged to meet and cooperate with the Sooner Swim Club, Norman Public Schools, and the Norman Optimist Club to establish operational practices that will better meet the needs of the Facility users.
20. Assignment: The Operator may not assign the Agreement without the prior written consent of the City.
21. Remedies: The Agreement will provide mutually acceptable remedies and applicable damages in the event of default by any Party.
22. Alteration or Changes to the Facility: Operator will not be allowed to make any changes or alterations to the Facility without the express approval of the City.
23. Termination of Agreement: The Agreement will provide for mutually acceptable terms related to termination of the Agreement.
24. 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 Lease and Management Agreement is adopted by all parties.

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

COLUMBUS CORPORATION OF OKLAHOMA CITY, INC.

BY: _____
Signature

Title

ATTEST: _____
Corporate Secretary

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

EXHIBIT A
Preliminary List of Programming and Service Categories

1. Basketball: youth and adult basketball leagues, opportunities for organized team practices, rentals, camps and recreational open play.
2. Volleyball: youth and adult volleyball leagues, opportunities for organized team practices, rentals, camps and recreational open play.
3. Indoor Aquatics: swim lessons and coaching, club swim practices, lap swim opportunities, and open swim time.
4. Pickleball: consistent daily indoor pickleball court time.
5. Adaptive Sports: year-round, consistent adaptive sports programming for people with disabilities for the youth and adult population.
6. Other sports: includes providing the opportunity for other sports as demand dictates including dodgeball, ultimate Frisbee, table tennis, gymnastics, dance and cheerleading.
7. Local, State, Regional and National Sports Competitions: this includes hosting larger scale tournaments for basketball, volleyball, swimming, pickleball, futsal, badminton and wrestling.