

**28E AGREEMENT BETWEEN
CLARINDA COMMUNITY SCHOOL DISTRICT AND CLARINDA YOUTH
CORPORATION**

THIS 28E AGREEMENT ("Agreement") is made and entered into by and between the Clarinda Community School District ("District") and the Clarinda Youth Corporation (CYC).

WHEREAS, the District is a public school 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, CYC is a 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, Iowa Code Chapter 28E authorizes public and private agencies to enter into agreements for joint or cooperative action;

WHEREAS, CYC is the builder, developer, owner and/or leaseholder of recreational facilities consisting of a gymnasium, baseball, football, and athletic fields, as well as related improvements and equipment in Clarinda, Iowa located at the Clarinda Treatment Complex, described in Exhibit A attached hereto and incorporated herein ("Facility").

WHEREAS, District desires to use the Facility for school purposes, such as physical education classes and extracurricular activity practices and games;

WHEREAS, the CYC is willing to make the Facility available for use by the District and the Community of Clarinda, Iowa; and

WHEREAS, the District and the CYC believe that an agreement pursuant to Iowa Code Chapter 28E will be to their mutual advantage and benefit.

THEREFORE, in consideration of the mutual promises contained in this Agreement, the District and the CYC agree as follows:

1. **PURPOSE.** The purpose of this Agreement is to provide for the terms and conditions upon which the CYC will make the Facility available to the District for the benefit of the Clarinda, Iowa community including but not limited to school purposes (such as physical education classes, extracurricular activity practices, games and other performances), the annual Clarinda Craft Carnival, meeting spaces, and youth activities.

2. **DURATION.** The term of this Agreement will commence upon the date that the Agreement is filed with the Iowa Secretary of State in accordance with Iowa Code Section 28E.8 following approval and execution by both parties. The Agreement will thereafter remain in effect until it is terminated pursuant to the termination provisions set forth herein.

3. **ADMINISTRATION.** No separate legal or administrative entity or joint board shall be established by this Agreement. The Superintendent of the District shall be designated as

the administrator of the Agreement for purposes of Iowa Code Chapter 28E.6. No joint budget will be established or maintained for purposes of carrying out the terms of this Agreement.

4. USE OF FACILITY.

- (a) Use. CYC, grants the District the authority to use and manage the Facility in accordance with Section 1 and 4(b) of this Agreement. The District and the CYC acknowledge and agree that the activities of each user of the Facility are the responsibility of such user, and that each user of the Facility is responsible for any damages such user causes to the Facility.
- (b) Scheduling. The District will determine the hours of operation of the Facility and have control over the scheduling of use of the Facility. The District shall have priority of use over all other users of the Facility.
- (c) Rent and Fess. CYC shall not require the District to pay any rent or other charges for use of the Facility. The District has the right to determine and charge a reasonable usage fee from users that require additional janitorial cleaning or groundskeeping of the used spaces.

5. CONSTRUCTION AND OPERATION OF FACILITY.

- (a) Facility. CYC agrees that it will be responsible for the maintenance of the Facility in good and usable condition as well as all associated costs, however, the District shall be responsible for mowing, groundskeeping, and snow removal of the Facility. CYC shall be considered the builder, developer, owner and/or leaseholder of the Facility at all times.
- (b) Contribution. At this time, other than mowing, groundskeeping, and snow removal, the District shall have no obligation to contribute additional funds to CYC. Once the District is able to review the use of the Facility pursuant to this agreement and to understand the operational expenses such as utilities and insurance and is able to build such expenses into the District's budget, the District may be required to pay such expenses as approved in advance by the parties.
- (c) Alterations. Neither the CYC nor the District will make any alterations to the baseball, football or athletic fields or gymnasium at the Facility costing in excess of \$5,000.00 without the prior written approval of the other party as to the alteration and associated responsibility for construction and costs. Any such alterations will be in furtherance of the use of the Facility and become the property of the CYC, unless otherwise agreed by the parties.

6. INSURANCE

- (a) Liability Insurance. The CYC shall carry liability insurance for protection of each, respectively, from any liability arising out of any accident or other occurrence

causing any injury and/or damage to any person or property at the Facility or arising from the performance or nonperformance of their obligations under this Agreement, due directly or indirectly to the actions or omissions of the insured. Liability policies shall have limits of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

- (b) Property Insurance. The CYC shall carry property insurance on the Facility.
- (c) Other Insurance Provisions. All required insurance shall be obtained from issuers of recognized responsibility licensed to do business in the State of Iowa. Each party shall be furnished with a copy of each policy required under this Agreement upon request.

7. INDEMNIFICATION. To the extent permitted by law, each party agrees to indemnify and hold harmless the other party from and against any and all demands, claims, liabilities, damages, losses, and expenses (including reasonable attorney fees) arising out of the indemnifying party's actions or omissions in the performance of this Agreement. This section shall survive termination of this Agreement.

8. COST RECOVERY. In the event that it shall become necessary for either party to institute legal proceedings against the other party for recovery of any amounts due and owing under this Agreement, it is expressly agreed that the prevailing party in any such action shall be entitled to recover from the non-prevailing party all costs related to such collection, including reasonable attorney fees and all expert witness fees incurred during pre-suit collection attempts, suit, and post judgment, appeal, or settlement collection. This section shall survive termination of this Agreement.

9. TERMINATION.

- (a) Termination for Cause. Either party may terminate this Agreement upon written notice to the other party if the other party fails to comply with any of the provisions of this Agreement, provided that written notice of the breach is given by the non-breaching party to the breaching party, the breaching party has at least thirty (30) days to cure the breach or such longer period of time as may be necessary to cure the breach, and the non-breaching party fails to cure the breach within said time period.
- (b) Termination Without Cause. Either party may terminate this Agreement upon written notice to the other party at any time, provided that written notice of the termination is given by the terminating party to the non-terminating party at least 30 days prior to the effective date of termination.
- (c) Agreement to Terminate. This Agreement may also be terminated at any time by written agreement of the parties.
- (d) Disposition of Property upon Termination. Upon termination of this Agreement, and subject to other contractual agreements with the State of Iowa and Iowa Prison Industries, the Facility shall be the property of the CYC.

10. COMPLIANCE. Each party agrees that it will comply with all federal, state, and local laws and regulations applicable to its performance under this Agreement.

11. STATUS OF PARTIES. It is expressly understood and agreed by the parties that nothing contained in this Agreement shall be construed to create a partnership, association, or other affiliation or like relationship between the parties, it being specifically agreed that their relation is and shall remain that of independent parties to a cooperative contractual relationship. In no event shall either party be liable for the debts or obligations of the other party.

12. NOTICES. All notices or other communications to be given under this Agreement shall be deemed given when either personally delivered or mailed by first class mail, postage prepaid, with proper address to the central administrative office of each party, with attention to the Superintendent for the District and attention to the President of the CYC.

13. FORUM/LAW. The parties consent to the jurisdiction of the Page County, Iowa District Court for all matters relating to this Agreement and agree that this Agreement shall be governed by Iowa law.

14. SEVERABILITY. If any provision of this Agreement shall be held illegal or invalid, the illegality or invalidity of such provision shall not affect any of the remaining provisions, and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

15. WAIVER. The failure of either of the parties to enforce any right or provision under this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by such party in writing. In addition, no waiver of a party's right or remedy will affect the other provisions of this Agreement.

16. FORCE MAJEURE. Notwithstanding anything contained in this Agreement to the contrary, neither party shall be liable to the other for failure to comply with any obligation under this Agreement if such party is prevented from doing so by reason of events beyond the reasonable control of the party.

17. ASSIGNMENT. Neither party may assign any right or obligation under this Agreement, in whole or in part, without the other party's prior written consent. This Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and permitted assignees.

18. NO THIRD PARTY BENEFICIARIES. This Agreement is entered into by and between the parties hereto for their benefit. There is no intent by any party to create, imply, or establish a third party beneficiary or status or rights in any person except as expressly set forth in this Agreement, and no such third party shall have any right to enforce any benefit created or established under this Agreement.

19. ENTIRE AGREEMENT. This Agreement supersedes all previous agreements, amendments, arrangements, and understandings between the parties with respect to the subject matter hereof and constitutes the entire agreement between the parties.

20. AMENDMENTS. This Agreement may be amended by a written instrument approved and executed by the District and the CYC and filed with the Iowa Secretary of State in accordance with Iowa Code Section 28E.8.

IN WITNESS WHEREOF, this Agreement has been approved by appropriate action and duly executed by the parties on the dates written below.

CLARINDA YOUTH CORPORATION

By: _____, Board President

Date: _____

ATTEST:

By: _____
CYC Secretary

CLARINDA COMMUNITY SCHOOL DISTRICT

By: _____, Board President

Date: _____

ATTEST:

By: _____
Board Secretary