



Ohio School Boards Association Capital Conference and Trade Show

November 13 – 16, 2011

Greater Columbus Convention Center
Columbus, Ohio

Limiting liability through coaching contracts

Administration

Monday, November 14, 2011

2:00 p.m.

C 120–122

Michael Brannon, assistant superintendent of operations, Mason City

Labor contract and proposal analysis

OSBA provides written critique and consultation on district's contract language, current provisions and specific recommendations for improvement.

Contact Van Keating at (614) 540-4000 or (800) 589-OSBA for more information.

Please complete an online conference evaluation either during or after the event at:
<http://links.ohioschoolboards.org/CC11Evaluation>

OSBA Mission

OSBA leads the way to educational excellence by serving Ohio's public school board members and the diverse districts they represent through superior service and creative solutions.

Ohio School Boards Association

8050 North High Street, Suite 100
Columbus OH 43235-6481
(614) 540-4000 fax (614) 540-4100
www.osba-ohio.org

COACHES CLINICS
FACILITY USE AGREEMENT

This FACILITY USE AGREEMENT (the "Agreement") is made by and between Mason City Schools, located and operating in Mason, Ohio (the "SCHOOL DISTRICT"), and any and all privately operated sports camps, coaches, clinics and /or athletic training programs or events ("COACHES CLINICS") which are not overseen or otherwise sponsored by the School District or its authorized representatives.

RECITALS

WHEREAS, the SCHOOL DISTRICT desires to provide the youth of the School District community use of and access to its Athletic Facilities for recreational and athletic purposes;

WHEREAS, it is the desire of the SCHOOL DISTRICT that maximum use be made of its facilities under its jurisdiction for community activities other than those sponsored by the SCHOOL DISTRICT;

WHEREAS, the SCHOOL DISTRICT desires to provide use of and access to its Athletic Facilities to COACHES CLINICS with the understanding that such use shall not interfere with regular school activities, shall not impose undue burden upon SCHOOL DISTRICT personnel and shall not utilize or in any way require the use of the limited funds allotted for SCHOOL DISTRICT building and facility services and maintenance;

WHEREAS, it is the desire and intent of the operators of COACHES CLINICS to conduct and hold privately sponsored athletic training and instructional programs on School District property;

THEREFORE, in consideration of the promises and mutual covenants herein contained and other good and valuable consideration, it is mutually agreed by and between the Parties hereto as follows:

SECTION 1

DEFINITIONS

Athletic Facilities shall mean all indoor and outdoor areas on School District Property designated for athletic or recreational use including, but not limited to, football fields, baseball and softball fields, soccer fields, tennis courts, basketball courts, volleyball courts, stadiums, areas designated for wrestling, hockey arenas, gymnasiums, auditoriums, locker rooms and other areas designated or otherwise designated for athletic activity use.

Coaches Clinics shall mean any and all sports camps or athletic training, fitness and /or instructional programs (other than those sponsored by the athletic department of Mason City Schools) which are privately overseen, funded and operated and for which a monetary fee or enrollment fee is charged to and paid by each student participant.

School District shall mean Mason City Schools, its affiliates, partners, officers, directors, employees, personnel and authorized representative, whether actively employed, disabled or retired.

School District Property shall mean "Athletic Facilities" (as defined herein) and, in addition, all real and personal property, both indoor and outdoor, and equipment and inventory maintained and owned by the Mason City Schools.

SECTION 2

INDEPENDENT RELATIONSHIP

None of the provisions in this Agreement are intended to create nor shall be deemed or construed to create any relationship between the SCHOOL DISTRICT and COACHES CLINICS other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this Agreement.

Neither of the Parties, nor any of their respective officers, directors or employees, shall be construed to be the agent, employee or representative of the other. Neither Party is authorized to represent the other for any purpose whatsoever without the prior consent of the other.

All COACHES CLINICS and their authorized representatives and assigns, agree that they are not and shall not at any time hereunder, while performing in their capacity on behalf of COACHES CLINICS as defined herein, be construed or regarded as an affiliate, partner, officer, director, employee or authorized representative of the SCHOOL DISTRICT.

SECTION 3

RESPONSIBILITIES AND OBLIGATIONS

(A) All COACHES CLINICS and their authorized representatives and assigns agree to the following terms and conditions governing their use of School District buildings, property, facilities and /or Athletic Facilities:

- (1) No School District building, property, facility and/or Athletic Facility shall, at any time, be used for any fund-raising activity unless all proceeds there from directly benefit the students or residents of Mason City School District;
- (2) To the extent that any advertising is purchased and utilized by Coaches Clinics for the promotion of a Coaches Clinic event, including but not limited to television, radio, newspaper, magazine, direct mailing or any similarly published media, any such advertising shall contain the following language "THIS EVENT IS NOT SPONSORED BY MASON CITY SCHOOLS". This required phrase shall appear in a prominent place on the document in close proximity to the advertised title of the camp and close to the line where a parent is required to provide signature granting their child permission to attend the camp. The phrase must appear in all capital letters, at 14 point font, and in **BOLD**.
- (3) One (1) adult shall be designated by and at the expense of every Coaches Clinic who will be solely responsible for all scheduling of

the use of School District Facilities and/or Athletic Facilities. This designated adult shall provide the School District all names, addresses and telephone numbers of those coaches and/or Coaches Clinic supervisors responsible during all designated scheduled time slots;

- (4) Each and every Coaches Clinic event involving students and/or minor children shall be chaperoned by at least one (1) or more adults, designated by the Coaches Clinic at their own expense to ensure proper conduct and proper care and use of school property;
- (5) No Coaches Clinic activity or event shall infringe upon or otherwise interfere with regularly scheduled School District programs and events;
- (6) At all times while utilizing School District buildings, property, facilities and/or Athletic Facilities, all rules and regulations of Mason City Schools must be strictly adhered to and followed. A copy of Mason City Schools policies, rules and regulations will be provided upon request;
- (7) At all times while utilizing School District buildings, property, facilities and/or Athletic Facilities, all applicable state and federal laws and local ordinances shall be strictly adhered to and followed;
- (8) Use of alcoholic beverages or controlled substances in or around any School District building, property, facility, Athletic Facility or on any premises owned and operated by Mason City Schools including, but not limited to, parking lots and Athletic Facilities, are strictly forbidden by Mason City Schools and the School District. Coaches Clinics and their authorized representatives agree to strictly comply with this prohibition whenever using or occupying School District buildings, facilities or Athletic Facilities;
- (9) Smoking, chewing tobacco and/or use of any other tobacco products in or around any School District parking lot, building facility, and Athletic Facility as defined herein or on any premises owned and operated by Mason City Schools is strictly prohibited;
- (10) Whenever using or occupying School District buildings, properties, facilities or Athletic Facilities, it is agreed that only authorized Mason City School personnel may handle or otherwise operate electrical, heating, air conditioning, lighting equipment, controls, sound equipment, stage equipment or any other equipment of Mason City Schools.

- (11) Coach operated concessions are permitted as long as all products sold are prepackaged and comply with all rules and regulations of the Warren County Health Department, however, use of school kitchens or school staff for ordering is strictly prohibited.
- (12) Any food or drink in Mason City School gymnasiums are strictly prohibited;
- (13) Coaches Clinics and their authorized representatives agree to be fully responsible to reimburse or otherwise indemnify Mason City School District for any and all damage done to School District buildings, properties, facilities and/or Athletic Facilities above ordinary wear. Excessive or unreasonable wear and tear and/or destruction of School District Property shall lead to the denial future application for use;
- (14) At the discretion of the School District, additional rental costs shall be incurred by Coaches Clinics for use of special equipment, as determined on an event-by-event basis.
- (15) In order to avoid confusion on the part of students or parents the Coaches Clinic shall not in any way infer sponsorship by Mason City Schools and shall not use the words "Comets" in the title of the clinic. Neither shall the clinic be advertised using current or former logos of Mason City Schools or any other presentation or representation that would serve to cause a reasonable person familiar with Mason City Schools to conclude the District is sponsoring the clinic.
- (16) Literature promoting, advertising, or otherwise advising of the availability of the clinic shall not be sent home from the school. It is permissible to place the literature in a general place of distribution for literature that is approved by the building principal and is available to other commercial and non-profit organizations.
- (17) Literature promoting, advertising, or otherwise advising of the availability of the clinic shall not be printed, faxed, mailed, or otherwise completed or distributed by use of Board owned equipment or devices.
- (18) Literature promoting, advertising, or otherwise advising of the availability of the clinic shall be submitted to the Assistant Superintendent of Operations for approval prior to distribution. Submission of the sample document shall be submitted in a reasonable time to allow for approval or revision as is necessary.
- (19) Literature promoting, advertising, or otherwise advising of the availability of the clinic shall include an address other than a

District owned building for the return of money, or other consideration for purposes of allowing participation in the clinic.

(B) The SCHOOL DISTRICT agrees to the following terms and conditions governing use by Coaches Clinics of School District buildings, facilities and/or Athletic Facilities:

- (1) In the event that any technical and/or specialized assistance is required, the School District agrees to provide technical and/or specialized assistance at the request of the Coaches Clinic organization or group, for the payment of a two hundred and fifty and 00/100 dollar (\$250.00) fee payable by the Coaches Clinic to the School District.
- (2) Notwithstanding the terms and conditions set forth in paragraph (B) (1) of Section 3 herein, the School District agrees that it will not share in any portion of the proceeds realized by the private Coaches Clinic organizations from the fees charged to student participants by the Coaches Clinic organizations.

SECTION 4

APPLICATION AND RENTAL FEES

All COACHES CLINICS and their authorized representatives agree to complete the Building/Facility Rental Application (the "Application") and to file said Application with the Mason City Schools' Facilities Use Scheduler at least two (2) weeks prior to the date on which the proposed use is scheduled to begin. Applications are available in the Facilities Scheduling Office at Mason Central Administration Bldg 211 N. East Street, Mason, Ohio 45040.

In the event that any COACHES CLINIC organization requests usage and rental of the Mason City Schools auditorium facility, it is agreed that a separate auditorium rental application addendum ("Application Addendum") shall be completed and filed with the Mason City Schools' Facilities Use Scheduler at least two (2) weeks prior to the

date on which the proposed auditorium use is scheduled to begin. Application Addendums for auditorium usage are available in the Facilities Scheduling Office at Mason High School located at Mason Central Administration Bldg, 211 N. East Street, Mason, Ohio 45040.

Any and all Applications and Application Addendums requiring multiple dates shall include, as an attachment to the application, a full and complete list of all requested dates and times for each use event.

It is agreed that a rental fee of One Hundred Dollars and 00/100 (\$100.00) (in the form of a check or money order only) shall accompany all Building/Facility Rental Applications. It is further agreed that a separate rental fee of One Hundred Dollars 00/100 (\$100.00) (in the form of a check or money order only) shall accompany all Auditorium Usage Addendum Applications.

It is further agreed that usage of School District Property and /or Athletic Facilities is conditioned upon approval by Mason City Schools of all applications filed.

SECTION 5

INSURANCE AND INDEMNITY

Each COACHES CLINIC agrees, at their sole cost and expense, to maintain a policy of comprehensive liability insurance to insure against any claim or claims for damages and/or injuries arising by reason of personal injuries, death, property damage or other damages arising, either directly or indirectly, out of incidents, circumstances or events associated with the use of School District Property, facilities and/or Athletic Facilities in connection with this Agreement. The amount and extent of such insurance coverage shall in no event be less than \$1.0 million per occurrence and \$3.0 million in the aggregate.

All policies of insurance described herein shall be effective prior to the beginning date of the use event, and shall remain continuously in effect there-after. Each party to this Agreement shall have the right to examine said policy(ies) of insurance upon reasonable notice.

Each COACHES CLINIC agrees that a certified copy of the policy of insurance including a certified copy of the insurance policy declarations of coverage, consistent with the description herein, shall accompany any and all rental applications described in Section 4 herein. **'MASON CITY SCHOOLS BOARD OF EDUCATION' shall be listed as Certificate Holder and Additional Insured on the insurance certificate.**

It is further agreed between the Parties to This Agreement that the SCHOOL DISTRICT shall, at its discretion, have the right to request proof of additional amounts of financial responsibility and/or insurance coverage consistent with the anticipated risk associated with the scope of each intended use. Moreover, it is agreed that the SCHOOL DISTRICT shall, at its discretion, reserve the right to require that a cash bond be posted by COACHES CLINICS to cover any damages that may occur to any School District Property, equipment or premises.

It is further agreed and understood between the Parties to This Agreement that the COACHES CLINIC, its employees, personnel and authorized representatives, and the students participating in any Coaches Clinic Program shall be specifically excluded from any and all insurance liability coverage held by Mason City School District under its education liability policy, commercial umbrella liability policy and any other liability policy of insurance insuring the Mason City School District.

All COACHES CLINICS agree and understand that damages and/or injuries may be incurred by Coaches Clinic organizers and/or the individual student participants

during and throughout the usage event. By entering into this Agreement, the COACHES CLINIC warrants and represents that it shall assume full financial and legal responsibility and liability for any and all damages, injuries, including but not limited to, any and all expenses, judgments, fines and payments arising out of, or in any way connected with any damages and injuries arising out of Coaches Clinic usage events.

All COACHES CLINICS agree that they shall indemnify and hold harmless the SCHOOL DISTRICT against expenses (including, without limitation, attorney's fees, filing fees, court reporters' fees, transcript costs and investigative costs), judgments, fines and amounts paid in settlement in connection with any action, suit or proceeding arising out of, or in any way connected with, any and all COACHES CLINIC usage events and any and all damages and injuries arising there from. This indemnification and hold harmless provision herein shall survive the termination of this Agreement.

SECTION 6

SECURITY

In the event that police protection or security services are deemed necessary by and at the discretion of SCHOOL DISTRICT officials, it is agreed that it shall be the full and complete responsibility of the COACHES CLINIC group or organization engaging in the rental use of School District Property to arrange to have such police protection or security service provided at the expense of the COACHES CLINIC organization.

SECTION 7

TERM, TERMINATION AND BREACH

The term of this Agreement shall commence on the effective date of this Agreement (i.e., ____ day of _____, 20__) and shall terminate on the ____ day of _____, 20__). This Agreement shall renew only upon notification by either party to this Agreement in writing to the other party to this Agreement of its desire to renew this Agreement. Thereupon, a new effective renewal date and termination date shall be established in writing upon mutual agreement of the parties.

Furthermore, in the event of a material breach by either party to this Agreement of any of its covenants under this Agreement, then at the option of the non-breaching party, the non-breaching party may terminate this Agreement if the breaching party fails to cure the breach within thirty (30) days after written notice of default.

Notwithstanding anything to the contrary, either party may terminate this Agreement at any time, with or without cause, by giving the other party ninety (90) days' prior written notice.

SECTION 8

NOTICES

Any and all notices, offers, acceptances, and other communications required to be given hereunder shall be given by and be deemed given when delivered by personal delivery or by telecopy or when deposited in the U.S. first-class mails addressed as follows:

If to the COACHES CLINIC:

If to the SCHOOL DISTRICT:

Mason City Schools
Attn: Business Services Department
211 North East Street
Mason, Ohio 45040

or to such other address as the party may designate in writing to the other party from time to time.

SECTION 9

MODIFICATION OR AMENDMENTS

This Agreement may only be modified or amended by a written instrument signed by the parties hereto or their successors in interest.

SECTION 10

ENFORCEMENT

This Agreement shall be interpreted, enforced and governed by the laws of the State of Ohio.

SECTION 11

AUTHORITY TO ENTER INTO AGREEMENT

Each party to this Agreement warrants and represents that it has full and complete authority to enter into this Agreement and that there is no impediment that would affect their ability to do so.

SECTION 12

DISPUTES AND CONTROVERSIES

All disputes, controversies, and claims of any nature whatsoever arising from or relating to this Agreement, including, but not limited to its negotiation, execution, or enforcement, or to any breach of the Agreement shall be settled by mandatory, binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association except as modified by the specific provisions set forth in this paragraph. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. § 1 et seq. The arbitration shall be held in Mason, Ohio and any court of competent jurisdiction located in Mason, Ohio shall have sole jurisdiction to enforce any arbitration or award rendered in arbitration. **Each party acknowledges and agrees that it is waiving the right to have any claim or dispute under this Agreement decided by a jury.**

SECTION 13

COMPLETE AGREEMENT

This Agreement constitutes the entire understanding among the parties in respect of the subject matter of this Agreement. This Agreement supersedes all prior and

contemporaneous understandings or agreements between the parties in respect to the subject matter of this Agreement. This Agreement may at any time be amended in whole or part by written instrument executed by each party hereto.

SECTION 14

BENEFIT

This Agreement shall be binding upon and inure to the benefit of the parties hereto, the legal representatives, successors in interest and assigns, respectively, of each such party. This Agreement is expressly intended by the parties for the benefit of the parties to this Agreement and not for any other person. Nothing in this Agreement shall be construed to create any rights or benefits in any third parties.

SIGNATURES

EACH PARTY ACKNOWLEDGES THAT, IN ENTERING INTO THIS AGREEMENT, IT HAS RELIED UPON ITS OWN JUDGMENT, BELIEF AND KNOWLEDGE AND THE ADVICE OF COUNSEL, THAT IT HAS BEEN ADVISED BY COUNSEL OF ITS CHOICE CONCERNING THE MEANING OF ALL TERMS OF THIS AGREEMENT, THAT IT HAS READ AND FULLY UNDERSTANDS THE TERMS OF THIS AGREEMENT AND THAT IT SIGNS AND EXECUTES THIS AGREEMENT VOLUNTARILY AND WITHOUT RESERVATION.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the ____ day of _____, 20__.

COACHES CLINIC:

By: _____
Signature

Print Name

WITNESS (OR) NOTARY PUBLIC

SCHOOL DISTRICT:

By: _____
Signature

Print Name