

**2N. Consideration of approving a shared facility use agreement with Swan River Montessori Charter School for the 2023-2024 school year**

<b>Prepared by:</b> Parks & Recreation Director	<b>Meeting Date:</b> 9/25/2023	<input checked="" type="checkbox"/> <b>Consent Agenda Item</b> <input type="checkbox"/> <b>Regular Agenda Item</b>
<b>Reviewed by:</b> N/A	<b>Approved by:</b> City Administrator	

**ACTION REQUESTED**

Motion to approve a shared facility use agreement with Swan River Montessori Charter School for the 2023-2024 school year.

**REFERENCE AND BACKGROUND**

In 2005, the City of Monticello and Swan River Montessori School developed a foundational agreement for student use of the Monticello Community Center. That agreement identified a Swan River ground lease with the City, including requirements to purchase student memberships at the community center. Since then, it was modified in 2008 and 2017 to remove a ground lease and a contract for deed termination agreement. Terms related to the parking lot and first right of refusal on any future sale of the property remained in place.

In general, since 2005 the State of Minnesota has changed the requirements for disbursement of funds for Montessori Charter Schools. Staff and legal teams from both organizations met to discuss the current agreement, and the overall recommendation was to draft a new agreement between Swan River Montessori School and the City of Monticello. In the meantime, a one-year shared facility use agreement was drafted for the 2023-24 school year. This agreement references the following building uses for school days and non-school days.

**School Day Uses:**

Gymnasium	One half (1/2) of the Gymnasium every school day 12:00 – 3:00 p.m. (subject to occasional use by the City for Blood Mobile, elections, and similar uses as scheduled by the School and the City).
Romp and Stomp Room	Daily use by School for preschool, pre-K, and Kindergarten pupils only, subject to scheduling between School and City.

Climbing Wall	Subject to future agreement between the City and the School, and dependent upon Community Center staffing.
---------------	--

**Non-School Day uses:**

Swimming Pool	Two weekday afternoons 12:45 – 3:00, or other 2.25-hour window. Actual day schedule subject to lifeguard staff availability.
Mississippi Room	Up to 7 scheduled uses per school year
“Swim/Gym/Climb Day”	Up to 2 scheduled all-day uses per school year, City to staff climbing wall and lifeguards on such day
Gymnasium	PTO Sponsored Breakfast with the Bunny Fundraiser (1 scheduled Saturday during school year, with date and time agreed in advance by City and School)

- I. **Budget Impact:** The School will pay the City of Monticello the sum of \$55,000 for use of the Monticello Community Center for the 2023-2024 fiscal year.
- II. **Staff Workload Impact:** Staff will manage student schedules and payment.
- III. **Comprehensive Plan Impact:** The Monticello 2040 Comprehensive Plan includes a chapter related to community facilities and infrastructure. This chapter outlines a goal and commitment to collaborative relationships with education providers to ensure strong education services for the benefit of the community.

**STAFF RECOMMENDED ACTION**

City staff recommend approving the shared facility use agreement with Swan River Montessori Charter School for the 2023-2024 school year.

**SUPPORTING DATA**

- A. Draft lease agreement
- B. Draft Lease agreement (redlined)

## SHARED FACILITY USE AGREEMENT

**THIS SHARED FACILITY USE AGREEMENT (“Agreement”)** dated the \_\_\_ day of \_\_\_\_\_, 2023 by and between **SWAN RIVER MONTESSORI CHARTER SCHOOL**, a Minnesota non-profit corporation (“**School**”) and the **CITY OF MONTICELLO**, a Minnesota municipal corporation (“**City**”).

### RECITALS

**WHEREAS**, the School leases a parcel of real property located at 500 Maple Street, Monticello, MN 55362 (“**School Property**”) from SRCS Building Company (“**SRCS**” or “**Building Company**”). The School Property is improved with a schoolhouse facility (the “**Schoolhouse Facility**”). The School is the sole tenant of SRCS and occupies 100% of the School Property, including the Schoolhouse Facility located thereon;

**WHEREAS**, the School Property abuts the parcel of property upon which the City’s Community Center is located at 505 Walnut Street, Monticello, MN 55362 (“**Community Center**”);

**WHEREAS**, the School and the City are parties to an Agreement (“**2005 Agreement**”) dated April 7, 2005 that, among other things, addressed shared use of certain portions of the Schoolhouse Facility and the Community Center, among other provisions;

**WHEREAS**, SRCS, the School, and the City entered into a Termination, First Option and Right of Refusal Agreement (“**Termination Agreement**”) dated October 2, 2017 concerning the Property. The Termination Agreement terminated all portions of the 2005 Agreement except Paragraphs, 14, 15, and 19 of such 2005 Agreement, which remain in force and effect;

**WHEREAS**, the Termination Agreement authorized the School and the City to enter into separate written agreements concerning the use of the Schoolhouse Facility and the Community Center; and

**WHEREAS**, the parties desire to modify certain terms of paragraph 15 of the 2005 Agreement as it relates to the shared use of the Community Center, only for the school’s 2023-2024 fiscal year (July 1, 2023 – June 30, 2024).

### AGREEMENT

**NOW, THEREFORE**, the parties agree as follows:

**1. ANNUAL PAYMENTS FOR FISCAL YEAR 2023-2024.** In full satisfaction of the obligations of the parties under paragraph of the 2005 Agreement for the period July 1, 2023 – June 30, 2024, the parties agree as follows:

(a) The School will pay the City the sum of \$55,000.00 in rent for the Community Center Use (defined below) by the School for the 2023-2024 fiscal year only. This may, at School’s election, be paid in a lump sum or in monthly installments, conditioned upon School’s receipt of lease aid.

(b) As used herein, the Community Center Use means the following uses of portions of the Community Center by the School during school hours:

(1) School Day Uses.

Gymnasium	One half (1/2) of the Gymnasium every school day 12:00 – 3:00 p.m. (subject to occasional use by the City for Blood Mobile, elections, and similar uses as scheduled by the School and the City).
Romp and Stomp Room	Daily use by School for preschool, pre-K, and Kindergarten pupils only, subject to scheduling between School and City.
Climbing Wall	Subject to future agreement between the City and the School, and dependent upon Community Center staffing.
Swimming Pool	Two weekday afternoons 12:45 – 3:00, or other 2.25-hour window. Actual day schedule subject to lifeguard staff availability.

The School will notify the City at least 24 hours in advance of any cancellation of the School’s use of the Swimming pool, Gymnasium and Romp and Stomp Room.

(2) Non-School Day Uses.

In addition to the foregoing, the School will have the following uses of portions of the Community Center during non-school hours:

Mississippi Room	Up to 7 scheduled uses per school year
“Swim/Gym/Climb Day”	Up to 2 scheduled all-day uses per school year, City to staff climbing wall and lifeguards on such day
Gymnasium	PTO Sponsored Breakfast with the Bunny Fundraiser (1 scheduled Saturday during school year, with date and time agreed in advance by City and School)

The School will notify the City at least 2 weeks in advance of any cancellation of the School’s non-school day use of the Community Center.

(c) Nothing herein shall limit the City in determining its method of management of the Community Center. Should the City at any point during the term of this Agreement sell or assign the Community Center facilities to another entity whether public or private, for profit or non-profit, this Agreement may be terminated or assigned to the new entity at the City’s sole discretion; provided, however, that if the City terminates this Agreement, it will refund any unapplied portion of the rent paid in accordance with this Paragraph 1 (amortized over the period September 1, 2023 – May 31, 2024).

(d) The School's right to use the Community Center under this Agreement shall terminate upon the termination of the City's lease of the School as provided in Paragraph 14, except as otherwise agreed by the parties in writing; provided, however, that if the City terminates this Agreement, it will refund any unapplied portion of the rent paid in accordance with this Paragraph 1 (amortized over the period September 1, 2023 – May 31, 2024).

**2. TERMS OF USE.** With respect to the uses of the School Property and the Community Center as provided in this Agreement, the parties agree as follows:

A. Insurance, Indemnification.

1. Indemnification. The School shall indemnify and hold harmless the City, its officials, agents, and employees from and against all liability, actions, claims, demands, costs, damages, or expense of any kind which may be brought or made against the City or which the City may pay or incur by reason of the use of the Community Center by the School, its officials, employees, students, staff, volunteers, guests or agents, which do not result from the willful act or gross negligence of the City, its officials, employees, or agents, and the School agrees to defend, indemnify and hold the City harmless against all actions, proceedings, claims, liability, damage, demands, or expense, including attorneys' fees and litigation expenses, in any manner caused by or arising from any of the following during the term of this Agreement: (a) any injury to or death of any person or any damage to property located in or on the Community Center; (b) any use, condition or state of repair of all of any part of the Community Center; (c) any failure by the School to perform any obligation under this Agreement; or (d) any negligence or willful act by the School or any of the School's its officials, employees, students, staff, volunteers, guests or agents. If any action, suit or proceeding is brought against the City by reason of any such occurrence, the School, promptly after written request by City, will defend such action, suit or proceeding at the School's expense with legal counsel acceptable to the City.

The City shall indemnify and hold harmless the School, its officials, employees, students, staff, volunteers, guests or agents, from and against all liability, actions, claims, demands, costs, damages, or expense of any kind which may be brought or made against the School or which the School may pay or incur by reason of the use of the School Property by the City, its officials, employees or agents, which do not result from the willful act or gross negligence of the School, its officials, employees, students, staff, volunteers, guests, or agents, and the City agrees to defend, indemnify and hold the School harmless against all actions, proceedings, claims, liability, damage, demands, or expense, including attorneys' fees and litigation expenses, in any manner caused by or arising from any of the following during the term of this Agreement: (a) any injury to or death of any person or any damage to property located in or on the School; (b) any use, condition or state of repair of all of any part of the School Property; (c) any failure by the City to perform any obligation under this Agreement; or (d) any negligence or willful act by the City or any of the its officials, employees or agents. If any action, suit or proceeding is brought against the School by reason of any such occurrence, the City, promptly after written request by School, will defend such action, suit or proceeding at the City's expense with legal counsel acceptable to the School. Notwithstanding the foregoing, the City's liability shall be limited to the liability limits identified in Minn. Stat. ch. 466.

2. Liability Insurance. During the term of this Agreement, each party shall maintain the following types of insurance, in the amounts specified below:

(a) Liability Insurance. Commercial General Liability Insurance covering use of the other party's property by the party or for any third party by consent of the party against claims for bodily injury or death or property damage, which insurance shall be primary and non-contributory and shall provide coverage on an occurrence basis with a per occurrence limit of not less than the amounts of maximum liability for such claims as set forth in Minnesota Statutes Section 466.04.

(b) Worker's Compensation Insurance. Worker's Compensation insurance in amounts required by applicable law.

Each party shall name the other as an additional insured on any such policies.

3. Insurance Generally. The insurance which Parties' are required to procure and maintain shall be issued by a qualified Minnesota local government insurance pooling entity or by an insurance company or companies licensed to do business in the State of Minnesota. The insurance policies shall provide that they shall not be canceled, materially changed or not renewed without thirty (30) days 2005 notice thereof to the additional insured. Each Party shall deliver to the other a duplicate original or certificate of such insurance policy or policies and shall, during the term of this Agreement, provide evidence of such insurance upon request of the other party.

B. Notices. Notices required by this Agreement shall be addressed as follows:

To School: Swan River Montessori Charter School  
500 Maple Street  
Monticello, Minnesota 55362

To City: City of Monticello  
505 Walnut Street, Suite 1  
Monticello, Minnesota 55362

**3. AMENDMENTS.** This Agreement may be amended or any of its terms modified only by written amendment as mutually agreed upon authorized and executed by the City and the School.

**4. EXECUTION COUNTERPARTS.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**5. GOVERNING LAW.** This Agreement shall in all respects be governed by and interpreted under the laws of the State of Minnesota.

**6. RELATIONSHIP OF THE PARTIES.** Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship or principal and agent or of partnership or of joint venture or of any association whatsoever between the School and the City.

7. **SEVERABILITY.** If any of the terms or provisions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions and conditions of this Agreement, or the application of such to persons or circumstances other than those to which it is declared invalid or unenforceable, shall not be affected thereby and shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.

*[Signatures on Following Page]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first above written.

**CITY OF MONTICELLO**

By:

Lloyd Hilgart, Mayor

By:

Rachel Leonard, City Administrator

**SWAN RIVER MONTESSORI  
CHARTER SCHOOL**

By: \_\_\_\_\_

Its: \_\_\_\_\_



## SHARED FACILITY USE AGREEMENT

THIS SHARED FACILITY USE AGREEMENT (“Agreement”) dated the \_\_\_ day of \_\_\_\_\_, 2023 by and between SWAN RIVER MONTESSORI CHARTER SCHOOL, a Minnesota non-profit corporation (“School”) and the CITY OF MONTICELLO, a Minnesota municipal corporation (“City”).

### RECITALS

**WHEREAS**, the School leases a parcel of real property located at 500 Maple Street, Monticello, MN 55362 (“School Property”) from SRCS Building Company (“SRCS” or “Building Company”). The School Property is improved with a schoolhouse facility (the “Schoolhouse Facility”). The School is the sole tenant of SRCS and occupies 100% of the School Property, including the Schoolhouse Facility located thereon;

**WHEREAS**, the School Property abuts the parcel of property upon which the City’s Community Center is located at 505 Walnut Street, Monticello, MN 55362 (“Community Center”);

**WHEREAS**, the School and the City are parties to an Agreement (“2005 Agreement”) dated April 7, 2005 that, among other things, addressed shared use of certain portions of the Schoolhouse Facility and the Community Center, among other provisions;

**WHEREAS**, SRCS, the School, and the City entered into a Termination, First Option and Right of Refusal Agreement (“Termination Agreement”) dated October 2, 2017 concerning the Property. The Termination Agreement terminated all portions of the 2005 Agreement except Paragraphs, 14, 15, and 19 of such 2005 Agreement, which remain in force and effect;

**WHEREAS**, the Termination Agreement authorized the School and the City to enter into separate written agreements concerning the use of the Schoolhouse Facility and the Community Center; and

**WHEREAS**, the parties desire to modify certain terms of paragraph 15 of the 2005 Agreement as it relates to the shared use of the Community Center, only for the school’s 2023-2024 fiscal year (July 1, 2023 – June 30, 2024).

### AGREEMENT

**NOW, THEREFORE**, the parties agree as follows:

**1. ANNUAL PAYMENTS FOR FISCAL YEAR 2023-2024.** In full satisfaction of the obligations of the parties under paragraph of the 2005 Agreement for the period July 1, 2023 – June 30, 2024, the parties agree as follows:

(a) ~~Swan River~~The School will pay the City the sum of \$55,000.00 in rent for the Community Center Use (defined below) by ~~Swan River~~the School for the 2023-2024 fiscal year only. This may, at School’s election, be paid in a lump sum or in monthly installments, conditioned upon School’s receipt of lease aid.

(b) As used herein, the Community Center Use means the following uses of portions of the Community Center by ~~Swan River~~the School during school hours:

(1) School Day Uses.

Gymnasium	<u>One half (1/2) of the Gymnasium</u> every school day 12:00 – 3:00 p.m. (subject to occasional use by the City for Blood Mobile, elections, and similar uses as scheduled by the School and the City).
Romp and Stomp Room	Daily use by School for preschool, pre-K, and Kindergarten pupils only, subject to scheduling between School and City.
Climbing Wall	Subject to future agreement between the City and the School, and dependent upon Community Center staffing.
Swimming Pool	Two weekday afternoons 12:45 – 3:00, or other 2.25-hour window. Actual day schedule subject to lifeguard staff availability.

The School will notify the City at least 24 hours in advance of any cancellation of the School’s use of the Swimming pool, Gymnasium and Romp and Stomp Room.

(2) Non-School Day Uses.

In addition to the foregoing, the School will have the following uses of portions of the Community Center during non-school hours:

Mississippi Room	Up to 7 scheduled uses per school year
“Swim/Gym/Climb Day”	Up to 2 scheduled all-day uses per school year, City to staff climbing wall and lifeguards on such day
Gymnasium	PTO Sponsored Breakfast with the Bunny Fundraiser (1 scheduled Saturday during school year, with date and time agreed in advance by City and School)

The School will notify the City at least 2 weeks in advance of any cancellation of the School’s non-school day use of the Community Center.

(c) Nothing herein shall limit the City in determining its method of management of the Community Center. Should the City at any point during the term of this Agreement sell or assign the Community Center facilities to another entity whether public or private, for profit or non-profit, this Agreement may be terminated or assigned to the new entity at the City’s sole discretion; provided, however, that if the City terminates this Agreement, it will refund any unapplied portion of the rent paid in accordance with this Paragraph 1 (amortized over the period September 1, 2023 – May 31, 2024).

(d) The School's right to use the Community Center under this Agreement shall terminate upon the termination of the City's lease of the School as provided in Paragraph 14, except as otherwise agreed by the parties in writing; provided, however, that if the City terminates this Agreement, it will refund any unapplied portion of the rent paid in accordance with this Paragraph 1 (amortized over the period September 1, 2023 – May 31, 2024).

**2. TERMS OF USE.** With respect to the uses of the School Property and the Community Center as provided in this Agreement, the parties agree as follows:

A. Insurance, Indemnification.

1. Indemnification. The School shall indemnify and hold harmless the City, its officials, agents, and employees from and against all liability, actions, claims, demands, costs, damages, or expense of any kind which may be brought or made against the City or which the City may pay or incur by reason of the use of the Community Center by the School, its officials, employees, students, staff, volunteers, guests or agents, which do not result from the willful act or gross negligence of the City, its officials, employees, or agents, and the School agrees to defend, indemnify and hold the City harmless against all actions, proceedings, claims, liability, damage, demands, or expense, including attorneys' fees and litigation expenses, in any manner caused by or arising from any of the following during the term of this Agreement: (a) any injury to or death of any person or any damage to property located in or on the Community Center; (b) any use, condition or state of repair of all of any part of the Community Center; (c) any failure by the School to perform any obligation under this Agreement; or (d) any negligence or willful act by the School or any of the School's its officials, employees, students, staff, volunteers, guests or agents. If any action, suit or proceeding is brought against the City by reason of any such occurrence, the School, promptly after written request by City, will defend such action, suit or proceeding at the School's expense with legal counsel acceptable to the City.

The City shall indemnify and hold harmless the School, its officials, employees, students, staff, volunteers, guests or agents, from and against all liability, actions, claims, demands, costs, damages, or expense of any kind which may be brought or made against the School or which the School may pay or incur by reason of the use of the School Property by the City, its officials, employees or agents, which do not result from the willful act or gross negligence of the School, its officials, employees, students, staff, volunteers, guests, or agents, and the City agrees to defend, indemnify and hold the School harmless against all actions, proceedings, claims, liability, damage, demands, or expense, including attorneys' fees and litigation expenses, in any manner caused by or arising from any of the following during the term of this Agreement: (a) any injury to or death of any person or any damage to property located in or on the School; (b) any use, condition or state of repair of all of any part of the School Property; (c) any failure by the City to perform any obligation under this Agreement; or (d) any negligence or willful act by the City or any of the its officials, employees or agents. If any action, suit or proceeding is brought against the School by reason of any such occurrence, the City, promptly after written request by School, will defend such action, suit or proceeding at the City's expense with legal counsel acceptable to the School. Notwithstanding the foregoing, the City's liability shall be limited to the liability limits identified in Minn. Stat. ch. 466.

2. Liability Insurance. During the term of this Agreement, each party shall maintain the following types of insurance, in the amounts specified below:

(a) Liability Insurance. Commercial General Liability Insurance covering use of the other party's property by the party or for any third party by consent of the party against claims for bodily injury or death or property damage, which insurance shall be primary and non-contributory and shall provide coverage on an occurrence basis with a per occurrence limit of not less than the amounts of maximum liability for such claims as set forth in Minnesota Statutes Section 466.04.

(b) Worker's Compensation Insurance. Worker's Compensation insurance in amounts required by applicable law.

Each party shall name the other as an additional insured on any such policies.

3. Insurance Generally. The insurance which Parties' are required to procure and maintain shall be issued by a qualified Minnesota local government insurance pooling entity or by an insurance company or companies licensed to do business in the State of Minnesota. The insurance policies shall provide that they shall not be canceled, materially changed or not renewed without thirty (30) days 2005 notice thereof to the additional insured. Each Party shall deliver to the other a duplicate original or certificate of such insurance policy or policies and shall, during the term of this Agreement, provide evidence of such insurance upon request of the other party.

B. Notices. Notices required by this Agreement shall be addressed as follows:

To School: Swan River Montessori Charter School  
500 Maple Street  
Monticello, Minnesota 55362

To City: City of Monticello  
505 Walnut Street, Suite 1  
Monticello, Minnesota 55362

**3. AMENDMENTS.** This Agreement may be amended or any of its terms modified only by written amendment as mutually agreed upon authorized and executed by the City and the School.

**4. EXECUTION COUNTERPARTS.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**5. GOVERNING LAW.** This Agreement shall in all respects be governed by and interpreted under the laws of the State of Minnesota.

**6. RELATIONSHIP OF THE PARTIES.** Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship or principal and agent or of partnership or of joint venture or of any association whatsoever between the School and the City.

7. **SEVERABILITY.** If any of the terms or provisions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions and conditions of this Agreement, or the application of such to persons or circumstances other than those to which it is declared invalid or unenforceable, shall not be affected thereby and shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.

*[Signatures on Following Page]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first above written.

**CITY OF MONTICELLO**

By:

Lloyd Hilgart, Mayor

By:

Rachel Leonard, City Administrator

**SWAN RIVER MONTESSORI  
CHARTER SCHOOL**

By: \_\_\_\_\_

Its: \_\_\_\_\_