

USE AGREEMENT

This Use Agreement (the "Agreement") is made and entered into on January 9, 2024 (the "Effective Date") by and between Independent School District No. 548, Pelican Rapids, Minnesota (the "District") and the City of Pelican Rapids (the "City")

Recitals

A. The District is constructing a multi-use building (the "Building") located on the District's Property as shown on the attached Exhibit A.

B. The City has agreed to contribute \$150,000.00 to the District to be used for the Building in exchange for the terms and conditions contained in this Agreement.

Agreement

1. The City shall contribute \$150,000.00 to the District to be used for the Building on the following schedule: the City shall contribute \$30,000.00 to the District, on or before March 1, 2024, the City shall contribute \$30,000.00 to the District, on or before December 31, 2024, the City shall contribute \$30,000.00 to the District, on or before December 31, 2025, the City shall contribute \$30,000.00 to the District, and on or before December 31, 2026, the City shall contribute \$30,000.00 to the District on or before December 31, 2027. The contributions are made in exchange for the terms and conditions contained in this Agreement. By contributing any money to the District, the City acknowledges, agrees, and understands that it has no right, title, and/or interest in or to the Building or any other real property and/or personal property owned by the District except as set forth in this Agreement.

2. The term ("Term") of this Agreement shall begin on the Effective Date and shall continue for a period of 10 years. After the Term, this Agreement shall continue until terminated by either the District or the City upon either party providing at least 60 days' written notice to the other party to terminate this Agreement and the termination shall be effective on the date specified on the notice provided it is at least 60 days after the notice. This Agreement may be terminated by written agreement of the Parties at any time.

3. The City shall have use of the warming house and skating rink as set forth in this Agreement.

4. The City shall be responsible for setting up the skating rink, flooding the rink and providing the water/ice for the rink, removal of snow off the skating rink, maintenance and repair of the skating rink, and tear down and clean up of the skating rink in the spring of each year. The City shall name the District as an additional insured on its general commercial liability policy for its actions and activities as set forth in this Agreement.

5. The District shall provide a supervisor for the skating rink during hours set by the District, advertise the hours of the skating rink, store of skates in the warming house, provide access to the warming house during skating hours, provide access to restrooms during skating hours, and providing restroom supplies for the warming house restrooms. The District shall clean the warming house and restrooms on a regular schedule. The City acknowledges, agrees, and understands that the District shall have the sole discretion in setting the hours of the skating rink and warming house. The District shall be responsible for repair and maintenance of the Building. The warming

house and the Building shall not be accessible except during skating rink hours. In the event that the City makes any announcements, advertisements, marketing, etc. relating to skating rink hours, the City shall first obtain the District's written consent on any announcements, advertisements, marketing, etc. relating to the skating rink hours.

6. The District shall provide parking for the skating rink users on the District's property located near the Building for as long as this Agreement is in effect. The City acknowledges, agrees, and understands that the parking provided to the skating rink users shall be on a first-come, first-served basis and that there are no dedicated or reserved spots for the skating rink users.

7. Nothing contained in this Agreement will be deemed or construed by the parties hereto, or by any third party, to create the relationship of partnership or joint venture or a relationship of principal and agent, employer-employee, or master-servant between the parties and no provision contained herein will be deemed to create any relationship between the parties hereto other than the relationship of independent parties.

8. All notices must be in writing and served by personal service or by mail as set forth in this Section (or such different address as may be designated by such party in a notice to the other party, from time to time).

For the District

Independent School District No. 548
Attn: Superintendent
PO Box 642
Pelican Rapids, MN 56572

For the City

City of Pelican Rapids
Attn: City Administrator
PO Box 350
Pelican Rapids, MN 56572

9. This Agreement, including any exhibits attached hereto, comprises the entire agreement of the parties with respect to the subject matter set out in this Agreement and supersedes all prior communications, understandings, and agreements of the parties, whether written or oral, express or implied, regarding such subject matter. There are no representations, warranties, terms, conditions, undertakings, or collateral agreements, express, implied, or statutory, between the parties. No change or modification of this Agreement is valid unless it is in writing and signed by both parties.

10. Each party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party. The liability of each party shall be governed and subject to Minnesota Statutes Chapter 466, as amended, and other applicable law. This Section shall survive termination of this Agreement.

11. Any limit(s) of liability applicable to the parties shall not be added together or stacked for any purpose. The total aggregate liability of one or more of the parties or their respective officers or employees arising out of this Agreement shall not exceed the limits for any party as set forth in

Minnesota Statutes Chapter 466, as amended. The provisions of this Section shall not be construed to create, as between the parties, any right of indemnification.

12. The invalidity of any portion of this Agreement will not, and shall not, be deemed to affect the validity of any other provision herein. In the event that any provision of this Agreement is held or declared invalid, illegal, void, or otherwise unenforceable, the remainder of this Agreement shall remain valid and enforceable to the fullest extent permitted by law. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. Upon a determination that a provision is invalid, illegal, void, or unenforceable, the parties agree to negotiate in good faith to modify this Agreement so as to accomplish their original intent as close as possible.

13. Each party acknowledges, represents, and warrants, by and through the duly authorized individual executing this Agreement that, (a) this Agreement was executed after the approval by the governing body of each party; (b) the parties have read and understood this Agreement, (c) the parties have all had reasonable opportunity to obtain independent legal counsel for advice and representation in connection with this Agreement, and (d) no party is relying on any promises or inducements not contained in this Agreement.

14. This Agreement, and any amendment, supplement, or schedule to this Agreement, may be executed in any number of counterparts, and may be executed using electronic signatures. The executed signature page(s) that form each counterpart may be joined together and attached to an original and together shall constitute one and the same instrument. Exchange of counterparts may be provided by electronic means.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

APPROVED:

Independent School District No. 548

Printed Name _____
Title _____
Signature _____
Date _____

City of Pelican Rapids

Printed Name BRETT E. FEASER
Title MAYOR
Signature Brett E. Feaser
Date 09 Jan 2024

EXHIBIT A