

**USE AGREEMENT BETWEEN OTTER TAIL COUNTY
AND INDEPENDENT SCHOOL DISTRICT NO. 548**

This Use Agreement (the “Agreement”) is made and entered into on February 13, 2024 (the “Effective Date”) by and between Independent School District No. 548, Pelican Rapids, Minnesota (the “District”) and Otter Tail County (the “County”)

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 County has agreed to contribute \$50,000.00 to the District, on or before December 31, 2023, to be used for the Building in exchange for the terms and conditions contained in this Agreement.

Agreement

1. Upon execution of this Agreement, the County shall contribute \$50,000.00 to the District, on or before March 1, 2024, in exchange for the terms and conditions contained in this Agreement. By contributing the \$50,000.00 to the District, the County 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 20 years. After the Term, this Agreement shall continue until terminated by either the District or the County 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 District shall provide family restrooms to users of the Heart of Lakes Trail from approximately April 1 to November 1, during daylight hours, for as long as this Agreement is in effect. The County acknowledges, agrees, and understands that weather conditions may impact whether the restrooms are open. The District agrees to use reasonable efforts to have the restrooms open during daylight hours from approximately April 1 to November 1 of each year for as long as this Agreement is in effect. The District shall be responsible for the maintenance, cleaning, and upkeep of the restrooms, including providing supplies necessary for the restrooms for as long as this Agreement is in effect. In the event that the County makes any announcements, advertisements, marketing, etc., relating to the restroom hours, the County shall first obtain the District’s written consent on any announcements, advertisements, marketing, etc., relating to the restroom hours.

4. The District shall provide a bike repair station near the Building for as long as this Agreement is in effect. The District shall be responsible for maintenance of the bike repair station for as long as this Agreement is in effect.

5. The District shall permit the County to install an informational kiosk, bike rack, bench, or similar trail amenities (the "Amenities") on the District's property located near the Building. The County shall obtain the District's written consent with regard to the specific location of the Amenities. The County shall be solely responsible for any maintenance, repair, and/or replacement of the Amenities. After this Agreement expires or terminates, the County shall remove the Amenities within 30 days. If the County does not remove the Amenities within 30 days after expiration or termination of this Agreement, the District shall be entitled to remove the Amenities.

6. The District shall provide parking for users of the Heart of Lakes Trail as identified in Exhibit A (attached) on the District's property located near the Building for as long as this Agreement is in effect. The County acknowledges, agrees, and understands that the parking provided to the users of the Heart of Lakes Trail shall be on a first-come, first-served basis and that there are no dedicated or reserved spots for the users of the Heart of Lakes Trail.

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 County

Otter Tail County
Attn: County Administrator
500 West Fir Avenue
Fergus Falls, MN 56537

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 to this agreement shall be liable for the acts of their own officers, employees, and/or agents and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party, its officers, employees and/or agents. It is understood and agreed the provisions of the Municipal Tort Claims Act, Minn. Stat. Ch. 466, and other applicable laws govern liability arising from the parties' acts or omissions.

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. Non-Discrimination – The County and District agree that no one shall be denied access to the premises because of race, color, sex, age, language, religion, nationality, political permission, disability or place of residence.

15. 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) from 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 _____

Otter Tail County

Printed Name KURT MORTENSON
Title OTTER TAIL COUNTY BOARD CHAIR
Signature K.A. Mortenson
Date 02/13/2024



EXHIBIT A