

Member Schroeder introduced the following resolution and moved its adoption:

## **RESOLUTION APPROVING IRA CIVIC CENTER LEASE AGREEMENT**

THIS LEASE AGREEMENT, by and between the City of Grand Rapids, Minnesota a municipal corporation, hereinafter referred to as the “City”, and Independent School District No. 318, Grand Rapids, Minnesota, hereinafter referred to as the “School”, entered into this 5th day of December, 2022.

### **RECITALS**

WHEREAS, City owns and operates the IRA Civic Center; and

WHEREAS, School has determined that the IRA Civic Center is a suitable facility for conducting SCHOOL's various academic and athletic programs and ceremonial events; and

WHEREAS, School wishes to lease the IRA Civic Center, on occasion in its entirety and on other occasions specific portions thereof; and

WHEREAS, City and School wish to enter into this Lease Agreement for the purpose of establishing the terms and conditions pursuant to which School shall lease the IRA Civic Center or portions thereof;

NOW THEREFORE, for good and valuable mutual consideration, City and School mutually agree as follows:

### **ARTICLE I - AGREEMENT TO LEASE**

WHEREAS, the City is a Statutory City organized under *Minnesota Statute Chapter 412*, with the authority to provide for the economic development and general welfare of the City, in accordance with statutory authority, including the ability to enter contracts; and Lease Agreement.

WHEREAS, in consideration of and subject to the mutual covenants, conditions and obligations of this Lease Agreement to be kept and performed, including the obligation to lease, City does hereby lease to School the IRA Civic Center solely to the extent specified in this Lease Agreement.

1. In consideration of and subject to the mutual covenants, conditions and obligations of this Lease Agreement to be kept and performed, including the obligation to lease, City does hereby lease to School the IRA Civic Center solely to the extent specified in this Lease Agreement.
2. The City is in the process of remodeling the IRA Civic Center on City-owned real property located at 1401 Third Avenue NW, Grand Rapids, MN 55744 (the “Property”); and
3. Pursuant to 2020 Laws of Minnesota, Chapter 3, Art. 1, Section 21, Subdivision 21, the City was awarded a grant from the State of Minnesota in the amount of \$5 million (the “State Grant”) for the purpose of design, construction, and equipping of capital improvements to the IRA Civic Center, thereon (the “Project”), as set forth in that certain Grant Agreement – Construction Grant for the IRA Civic Center, SPAP-20-0014-P-FY23, dated October 22, 2020 (the “State Grant Agreement”).
4. Under the provisions of *Minnesota Statutes, Sections 471.15 to 471.191*, the City is authorized to remodel the Property as a civic center, and to thereafter expend funds for the operation and maintenance of the civic center and the operation of the Governmental Program (as defined in the State Grant Agreement) as a part of its program of public recreation, and to directly operate such program; and

5. The total cost to construct the Project with the additional amenities the City plans to provide is likely to exceed \$15.5 million, and the City is seeking to raise third-party funds to assist in the financing of that portion of the remodeling of the Civic Center that exceeds the \$5 million State Grant and the City match; and
6. The City has determined that the School possess the resources to assist the City in carrying out the Governmental Program by supporting the Governmental Program financially; and
7. The City believes adequate funding and support of the Civic Center will encourage economic development of the City and promote tourism for the betterment of the Grand Rapids community; and
8. The School desires to contribute funding in the form of lease payments to support the remodeling of the Civic Center; and
9. Conditions Precedent. All obligations of the Parties set forth herein are subject to the conditions precedent that the Parties shall have received the following (unless waived in writing by the Parties):
  - a. Resolution of the School authorizing body the terms and conditions of this Agreement;
  - b. Resolution of the Grand Rapids City Council authorizing the approval of the terms and conditions of this Agreement;
  - c. A favorable written opinion of City of Grand Rapids legal counsel that all necessary approvals, including, but not limited to, the Minnesota Department of Department of Management and Budget (“MMB”) have been received by the City to move forward with this Agreement.
10. No Joint Venture. Nothing herein contained shall be construed to place the parties in a relationship of partners or joint ventures and neither party shall have the power to obligate or bind the other in any manner whatsoever.
11. Dispute Resolution. Parties agree to negotiate all disputes between them in good faith for a period of Thirty (30) days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law.
12. State Grant Agreement Requirements. In addition to the requirements related to the State Grant and the State Grant Agreement set forth elsewhere in this Agreement, the provisions set forth in this Section are required under the State Grant Agreement.
  - a. The Parties acknowledge and recognize that this Agreement is subject to the terms and conditions of the State Grant Agreement. Accordingly, this Agreement must be approved in writing by the Commissioner of Management and Budget (“Commissioner”), and absent such approval it is null and void and of no force or effect. The Parties agree to cooperate to obtain all necessary approvals and signatures under the State Grant Agreement.
  - b. The Parties acknowledge and recognize that the terms, conditions and provisions of the State Grant Agreement control over any inconsistent provisions in this Agreement.
  - c. The Parties acknowledge that the City is a public body with authority under the Act to own the Civic Center and operate the Governmental Program, as defined in the State Grant Agreement.
  - d. This Agreement may be terminated by the City if there is an Event of Default by the School, or in the event that the City is no longer authorized by law to own the Property or operate the Civic Center.
  - e. This Agreement will automatically and immediately terminate upon a termination of the Governmental Program, as defined in the State Grant Agreement, or change in such Governmental Program that no longer allows the City to continue to own or operate The Civic

Center for the Governmental Program. The City will give the School as much notice as possible and, to the extent permitted by law, the Parties shall use good faith efforts to enter into a new agreement with the same or substantially similar terms as this Agreement.

- f. The School is prohibited from creating or allowing any voluntary lien or encumbrance or any involuntary lien or encumbrance upon the Property, except with the advance written consent of the Commissioner.
- g. Any changes, alterations, or modifications to this Agreement must be agreed to, in writing, by the Commissioner.

13. Compliance as to Bonds.

- a. Subject to direction from Minnesota Management and Budget, interest on any bonds issued by the State for the Project is intended to be excludable from gross income for federal income tax purposes (“Tax-Exempt Bonds”) and if the City or the Commissioner determines, based upon the written notice of nationally recognized bond counsel, that any action under this Agreement creates a significant risk that interest on any Tax-Exempt Bonds will not be excludable from gross income for federal income tax purposes, the Parties shall negotiate in good faith to agree on alternative action to avoid such a result. In no event shall the foregoing agreement require any Party to amend or modify any material term of this Agreement.
- b. The School irrevocably waives any claim for depreciation or investment credit with respect to the Property and shall not deduct any payments to the City provided for in this Agreement as rent.

14. State Right to Access Records. The Parties shall each take any such actions and provide any records or other information related to the Property to the Commissioner as the Commissioner shall determine necessary to ensure that the interest to be paid on the GO Bonds supporting the Grant is exempt from federal taxation.

15. Assignment. This Agreement may not be assigned by either Party without the written consent of the other Party.

16. Modifications/Amendment. Any alterations, variations, modifications, amendments or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing, and signed by authorized representative of the City and the School and approved in writing by the Commissioner of Minnesota Management and Budget.

17. Records—Availability and Retention. Pursuant to *Minn. Stat. § 16C.05, subd. 5*, the School agrees that the City, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the School and involve transactions relating to this Contract. The School agrees to maintain these records for a period of six years from the date of termination of this Agreement.

18. Events of Default. An Event of Default includes: the failure of either Party to observe or perform its obligations hereunder and the breach or default of this Agreement by either Party.

19. Force Majeure. The Parties shall each be excused from performance under this Contract while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either Party is rendered unable wholly or in part by

force majeure to carry out its obligations under this Contract then the Party affected by force majeure shall give written notice with explanation to the other Party immediately.

20. Governing Law. This Contract shall be deemed to have been made and accepted in Itasca County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Contract without regard to its choice of law or conflict of laws principles.
21. Data Practices. The Parties acknowledge that this Contract is subject to the requirements of *Minnesota's Government Data Practices Act (Act)*, *Minnesota Statutes, Section 13.01 et seq.* The School agrees to abide by the applicable provisions of the Act, HIPAA requirements and all other applicable state or federal rules, regulations or orders pertaining to privacy or confidentiality. The School understands that all of the data created, collected, received, stored, used, maintained or disseminated by the School in performing those functions that the City would perform is subject to the requirements of the Act, and the School must comply with those requirements as if it were a government entity. This does not create a duty on the part of the School to provide the public with access to public data if the public data is available from the City, except as required by the terms of this Contract.
22. No Waiver. Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Contract or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Contract. Any express waiver of a term of this Contract shall not be binding and effective unless made in writing and properly executed by the waiving Party.
23. Severability. The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Contract to the extent of its invalidity or unenforceability, and this Contract shall be construed and enforced as if the Contract did not contain that particular provision to the extent of its invalidity or unenforceability.
24. Entire Contract. These terms and conditions constitute the entire Contract between the Parties regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Contract.
25. Recitals. The Recitals set forth above are incorporated into and are made a part of this Amendment.
26. Headings and Captions. Headings and captions contained in this Contract are for convenience only and are not intended to alter any of the provisions of this Contract and shall not be used for the interpretation of the validity of the Contract or any provision hereof.
27. Survivability. All covenants, indemnities, guarantees, releases, representations and warranties by any Party of Parties, and any undischarged obligations of City and the School arising prior to the expiration of this Contract (whether by completion or earlier termination), shall survive such expiration.
28. Execution. This Contract may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any Party to the counterpart shall be deemed a signature to the Contract, and may be appended to, any other counterpart. Facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing Party.
29. School's Right of Possession and Use: School shall have the right to possess and use the IRA Civic Center for the purposes, to the extent and at the times set forth in Exhibit A attached hereto and incorporated herein by reference. School's right to possess and use the IRA Civic Center shall be intermittent and confined to those portions of the IRA Civic Center specifically identified in Exhibit A or necessary to carry out School's intended uses as identified in Exhibit A. City and its licensees shall have the right to enter upon and use the IRA Civic Center at all times not inconsistent with Exhibit A. School shall at all times comply with all statutes, ordinances, codes and regulations of any governmental authority

concerning the use of the premises. School shall not permit any hazardous or dangerous activity to be conducted at the IRA Civic Center or any activity which will increase insurance risks for premiums on the premises.

30. Schedule of Use: School shall submit to City annually before April 1 a schedule of all proposed ice uses for the following year, which schedule shall be subject to City's approval. School's ice uses shall be given priority scheduling by the City.
31. Supervision, Crowd Control:
  - a. Safety: City shall be responsible to summon appropriate medical personnel in the event any such persons require medical attention.
  - b. Crowd Control: School shall monitor and oversee spectator activity for the purpose of maintaining orderly behavior and compliance with any policies for the use of the IRA Civic Center which may be promulgated by City from time-to-time. City shall provide City Police Officer services at the request of School during boys' high school hockey games and tournaments. Reimbursement to City of said Police Officer services is deemed included in the rental amount set forth in Paragraph 2.1 hereof. City Police Officers are present for the purpose of maintaining order and security for the safety of persons in attendance by enforcing all applicable ordinances and statutes and arresting persons suspected of violation of law.
32. Parking Lot: School, its participants, staff and spectators shall have the right to use the IRA Civic Center parking lot in conjunction with School's activities and events at the IRA Civic Center, subject to parking lot utilization policies which may be promulgated by City from time-to-time. Said use shall be in common with other invitees of City who may be using the IRA Civic Center.
33. Concessions: City retains the exclusive right to operate all concessions at the IRA Civic Center, either through representatives of City or City's assignees. This Lease Agreement does not confer upon School the right to operate concessions at the IRA Civic Center.

## ARTICLE II – LEASE

1. Lease: School shall pay to City monthly lease payments, including annual three percent increase for the period of July 2022 through July 2026, in accordance with the following table:

Period	
July 1, 2022 through June 30, 2023	\$177,186.78
July 1, 2023 through June 30, 2024	\$182,502.38
July 1, 2024 through June 30, 2025	\$187,977.45
July 1, 2025 through June 30, 2026	\$193,616.78
July 1, 2026 through June 30, 2027	\$199,425.28

In addition, any increase or alteration in use by School during 2022 – 2023 or subsequent years shall subject the payment amount to further review and renegotiation by the parties, provided that in no event shall the rents be decreased to less than the above amount or that stated in Section 2.1 together with the aforementioned annual three percent increases.

If hockey season is cancelled or altered due to a pandemic, the monthly lease rates shall be reduced by thirty-seven percent for any months 'In Pause' from November 1<sup>st</sup> through March 30<sup>th</sup>.

2. Usage: School may use the premises only for the purposes described in this Agreement and shall not sublet or otherwise rent the ice to the public or any other outside group.
3. Lease Renegotiations: Lease renegotiations due to the increase or alteration in use by School shall be conducted in accord with this Section. For the 2027-2028 lease period, the parties shall conduct any renegotiations during the month of March, 2027. If the parties are unable to reach agreement after any such renegotiation, then this agreement shall terminate as of June 30, 2027.

### **ARTICLE III – MAINTENANCE, REPAIR**

1. Maintenance, Repair: City shall at all times during the term of this Lease Agreement, at City's own cost and expense, repair and maintain the IRA Civic Center, any improvements or alterations thereto, all fixtures and equipment therein, and the exterior of the building and the parking lot, except as otherwise provided in this Article.
2. Damages: School shall reimburse City for the reasonable cost to repair and restore the IRA Civic Center in the event of damage to the premises caused by negligence on the part of participants, coaches or other staff, or spectators who are in or upon the IRA Civic Center in conjunction with any of School's activities or events.
3. Clean up: Although City retains ultimate responsibility for maintenance, School shall perform routine clean up after its use of the premises, including proper storage of all equipment, pick up and proper disposal of litter.
4. Alterations, Improvements: School shall not make alterations or improvements to the premises without the advance written consent of City.

### **ARTICLE IV -UTILITIES**

1. City shall furnish such heat, air conditioning, water, sewer, electricity and garbage collection as shall be necessary, in City's judgment for the comfortable use and occupancy of the premises under normal conditions.
2. School shall conserve heat, water, and electricity, and shall not neglect or misuse, water fixtures, electric lights, or other equipment or facilities furnished in conjunction with City's provision of utilities pursuant to this Article.

### **ARTICLE V - TERM**

1. The term of this Lease Agreement shall be from July 1, 2022 through June 30, 2027, except that this Lease Agreement may terminate pursuant to the terms and conditions contained in this Agreement.

### **ARTICLE VI - DEFAULTS**

1. On the occurrence of either of the following: (a) a lease payment from the School to the City shall remain unpaid in whole or in part for more than thirty (30) days after it is due and payable; or (b) the School's violation or default in any of covenants, agreements, stipulations or conditions herein, and such violation or default shall continue for a period of thirty (30) days after written notice from the City of such violation or default; then it shall be optional for the City to declare this Lease Agreement forfeited and the

terms, including School's right of use and possession of the IRA Civic Center, ended.

2. City shall not be deemed to be in default under this Lease Agreement until the School has given the City written notice specifying the nature of the default, and the City does not cure such default within thirty (30) days after receipt of such notice or within such reasonable time thereafter as may be necessary to cure such default where such default is of such character as to reasonably require more than thirty (30) days to cure.

## **ARTICLE VII - ASSIGNMENT, SUBLETTING**

1. School shall not assign any rights or duties under this Lease Agreement or sublet the leased premises, or any part thereof, nor allow any other person to occupy or use the leased premises without the prior written consent of City, which consent shall not unreasonably be withheld. A consent to one assignment, sublease or other occupation or use by any other person or entity shall not be a consent to any subsequent assignment, sublease, occupation or use by persons other than School. This Lease Agreement shall not be assignable, as to the interest of School, by operation of law, without the written consent of City. If City does give consent to assignment, subletting or occupation by another, such consent shall not release School from its obligations hereunder unless a release is specifically given by City.

## **ARTICLE VIII - CITY'S ACCESS**

1. City, its agents and employees shall have the right to enter the leased premises upon reasonable advance notice for the purpose of inspecting, repairing, altering or improving the leased premises, or for any other purpose not inconsistent with Exhibit A. There shall be no diminution of rent and no liability on the part of City by reason of any inconvenience, annoyance or injury caused by City's reasonable exercise of the rights reserved by City in this Article.

## **ARTICLE IX - FIRE AND OTHER CASUALTY**

1. If during the term of this Lease Agreement the leased premises or any portion thereof shall be damaged or destroyed by fire or other casualty so that the said leased premises or a portion thereof shall thereby be rendered unfit for use or occupation, City shall have the option to either (a) repair such damage with all reasonable diligence and restore the premises to substantially the condition immediately prior to such event, and until said premises shall have been duly repaired and restored, the rent herein reserved, or a just and proportionate part thereof, according to the nature and extent of the injury which has been sustained, shall be abated, or (b) City may terminate this lease and end the term thereof, and in case of such termination, the rent shall be paid to the date of such fire or casualty and all other further obligations on the part of either party hereto shall cease.

## **ARTICLE X - HOLDING OVER**

1. Any holding over by School of the leased premises after the expiration or termination of the term of this Lease Agreement without consent of City shall constitute a default by School hereunder and School shall be liable and responsible for all damages and costs sustained by City thereby. Said holding over shall constitute School to be a tenant from month-to-month, subject to all the conditions, provisions and obligations of this Lease Agreement and so far as the same can be applicable to a month-to-month tenancy.

## **ARTICLE XI - INDEMNIFICATION, INSURANCE**

1. Indemnity: School shall protect, defend, hold harmless and indemnify City against any and all claims, actions, losses, costs, expenses and liabilities, including reasonable attorney's fees for defence, arising out of or in any way related to School's use of the premises or any of School's activities or events, save when said claim, action, loss, cost, expense or liability is proximately caused solely and exclusively by the negligence or breach of this Lease Agreement by City. In case of any action or proceeding brought against City by reason of a claim covered by this Agreement, upon notice from City, School covenants to defend such action or proceeding by counsel reasonable satisfactory to City.
2. Insurance: School shall maintain through the term of this Lease Agreement a policy of comprehensive general liability insurance with limits of at least \$1,000,000 per person, \$1,000,000 per occurrence, or City's statutory limits of liability pursuant to Minnesota Statutes, whichever is greater. As to each such policy City shall be named as an additional insured. Said policy of insurance shall be evidenced by a certificate of insurance which shall be placed on file with City by School prior to commencement of occupancy of the premises by School. Each such policy or certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified without giving City thirty (30) days advance written notice of such change. The policy shall also contain a contractual liability endorsement evidencing insurance coverage for School's indemnification obligation to City under this Lease Agreement.
3. Liability to School: City shall not be liable to School or to any employee, student or invitee of School for any claim or cause of action arising out of death, injury, damage to property occurring in, on or about the leased premises except for damages attributable exclusively to the negligence or breach of this Lease Agreement by City, its employees or agents, by a court of competent jurisdiction.
4. Liability Limits Not Waived: Nothing in this Article XI shall cause either City or School to be subject to liability in excess of any statutory limits of liability applicable to City or School.

## **ARTICLE XII - MISCELLANEOUS**

1. Notices: All notices herein provided for shall be sent by registered mail, postage prepaid, return receipt requested, and shall be deemed to have been given when sent, and if by School to City shall be addressed to City at the place herein provided for the payment of rent, and if given by City to School shall be addressed to: Superintendent, Independent School District 318, Administration Building, 820 NW 1<sup>st</sup> Avenue, Grand Rapids, MN 55744.
2. Waiver, Modification: No waiver of any condition, covenant, right or option of this Lease by City shall be deemed to imply or constitute a further waiver of any like condition or covenant of said Lease Agreement. No amendment or modification of this Lease Agreement shall be valid or binding unless expressed in writing and executed by duly authorized representatives of the parties in the same manner as the execution of this Lease.
3. Representations: Neither City nor any agent or employee of City has made any representations or promises with respect to the leased premises or the IRA Civic Center except as herein expressly set forth,



and no rights, privileges, easements or licenses are required by School except as herein expressly set forth.

4. Cumulative Rights: No right or remedy herein conferred on and reserved to the School or the City is intended to be exclusive of any other right or remedy hereof provided by law, but each shall be cumulative in addition to every other right or remedy given herein or not or hereafter existing by law or in equity or by statute.
5. Approvals: Wherever the City's or the School's approval or consent shall be required herein, such approval or consent shall not be arbitrarily or unreasonably conditioned, delayed, or withheld and shall be deemed to have been given, unless within twenty (20) days of the request therefor, the City or the School, as appropriate, notifies the requesting party that the City or the School, as appropriate, is denying such approval or consent, stating in such notice that reasonable grounds therefor.
6. Successors, Assigns: This Lease Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns. However, nothing in this paragraph shall be deemed to avoid the necessity of School obtaining written consent from City to assign or sublet this Lease Agreement.
7. No Partnership: Nothing contained in this Lease Agreement shall be deemed or construed to create a partnership or joint venture of or between City and School or to create any other relationship between the parties hereto other than that of City and School.

NOW, THEREFORE, BE IT RESOLVED, that Independent School District No. 318, Grand Rapids, Minnesota hereby agrees to and approves the terms and conditions of the Lease Agreement with the City of Grand Rapids; and

BE IT FURTHER RESOLVED, that the School Board Chair and Superintendent of Independent School District No. 318, Grand Rapids are hereby authorized to execute the Lease Agreement with the City of Grand Rapids.

The motion for the adoption of the foregoing resolution was duly seconded by member

Marty and upon vote being taken thereon, the following voted in favor thereof:

Malissa Bahr, David Marty, Ben Hawkins, Pat Medure, Mindy Nuhring, Mark Schroeder

and the following voted against: none

whereupon said resolution was declared duly passed and adopted.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

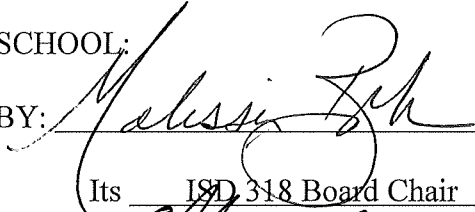
CITY: CITY OF GRAND RAPIDS

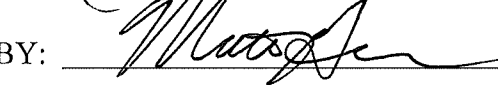
BY: \_\_\_\_\_  
Its Mayor

BY: \_\_\_\_\_  
Its City Clerk

Date: \_\_\_\_\_

SCHOOL:

BY:  \_\_\_\_\_  
Its ISD 318 Board Chair

BY:  \_\_\_\_\_  
Its ISD 318 Superintendent

Date: 12/5/22

## EXHIBIT A

### ICE USES:

- Boys Hockey Girls Hockey
- Cheerleader's practice (non-priority schedule)
- 70 hours of non-prime hours for physical education classes

### DRY FLOOR USES:

- All boys and girls hockey ticket sales
- Exclusive locker room use for boys and girls hockey
- Year-around hockey equipment storage
- Exclusive storage area (skate sharpening room)
- Use of locker rooms for visiting football teams
- Use of upper lobby for ski team practice
- High School Graduation ceremonies
- Emergency evacuation holding area in case of emergency school closing
- 115 hours of dry floor activities, i.e. prom, baseball, tennis, lacrosse