

City Council Member _____ introduced the following resolution, City Council Member _____ seconded the motion and moved its adoption:

RESOLUTION NO. 24-XX

NAMING RIGHTS USE AGREEMENT

THIS AGREEMENT made this ____ day of _____ 2023, between the City of Grand Rapids, Minnesota (“the City”), located at 420 North Pokegama Avenue, Grand Rapids, MN 55744, and Yanmar Compact Equipment North America (“the Company”), a United States corporation located at 840 Lily Lane, Grand Rapids, MN 55744 (collectively “the Parties”).

RECITALS

- A. 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
- B. WHEREAS, pursuant to the Laws of Minnesota, 2020, 5th Special Session, Chapter 3, Article 1, Section 21, Subdivision 21, (the “G.O. Bonding Legislation”), the City was awarded a grant from the State of Minnesota in the amount of \$5,000,000 (the “State Grant”) for the purpose of Improvements at the IRA Civic Center (the “Project”), as set forth in that certain Grant Agreement – Construction Grant for SPAP-20-0014-P-FY23, dated October 22, 2020 (the “State Grant Agreement”).
- C. WHEREAS, the City is in the final stages of constructing the Project on City-owned real property located at 1401 NW 3rd Avenue, Grand Rapids, MN 55744 (the “Property”); and
- D. WHEREAS, under the provisions of Minnesota Statutes, Sections 471.15-471.16, the City is authorized to design, construct, and equipped capital improvements to the IRA Civic Center, and to thereafter expend funds for the operation and maintenance of the IRA 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
- E. WHEREAS, the City believes that granting donor recognition in the form of exclusive naming rights to portions of the facility along with certain other rights and recognitions will advance the Governmental Program of youth activities and sports; and
- F. WHEREAS, in consideration of the payments described herein, the City desires to provide the Company with certain rights and exclusive recognition, including the naming of the IRA Civic Center at the Project, as shown on Exhibit A attached hereto and

incorporated herein (the “DEF Area”) and other exclusive Signage Rights and Sponsorships rights as more particularly described herein.

NOW, THEREFORE, the City and the Company, in consideration of the mutual promises and covenants set forth herein, do hereby agree as follows:

AGREEMENT

1. Payments. From January 1, 2024, through June 30, 2024, the Company agrees to pay to the City the amount of Fourteen Thousand Seven Hundred dollars (\$14,700), as provided and subject to the terms and conditions herein. Effective July 1, 2024, the Company agrees to pay to the City the amount of Eight Hundred Thousand dollars (\$800,000) in ten annual \$80,000 payments, as provided and subject to the terms and conditions herein. City shall use this payment solely to pay operating and maintenance expenses for the Project or to pay the principal, interest, redemption premiums, and other expenses when due on debt related to the Property other than the State Grant, all in accordance with Minn. State. § 16A.695 and The Fourth Order Amending Order of Commissioner of Finance: Related to Use and Sale of State Bond Financed Property (“Commissioner’s Order”).

Within thirty (30) days of the end of each 12 month period in the term, starting on the effective date of this agreement (each such 12 month period shall be referred to herein as an “Agreement Year”), City agrees to provide the Commissioner of the Department of Management and Budget, his or her successor or assigns, a reconciliation of all of the payments received under all use contracts at the Project and the operating and maintenance expenses for the Project for the then just-completed Agreement Year (“Reconciliation Statement”). If for any Agreement Year the payments received under all use contracts at the Project collected for the prior Agreement Year exceed the operating and maintenance expenses for the Project for such prior Agreement Year based upon the City’s Reconciliation Statement, then the City shall immediately refund to the Company its pro rata share of any overpayment.

2. 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 Company authorizing body approving 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 the City's 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.
3. Exclusive Recognition. In recognition of the Company's contributions to the funding of the Project, the City hereby grants to the Company the following rights and exclusive recognitions:
 - a. Naming Rights. The City hereby agrees the Company will have the exclusive right to be named on DEF Area. The City agrees it shall not grant naming rights to any other Company for any other main facility of the Project. For purposes of this paragraph main facility means the following: the entire building facility consisting of the West and East Venues located at 1401 NW 3rd Avenue, Grand Rapids, MN 55744.
 - b. Signage Recognition. The City hereby agrees the Company will have the exclusive right to be named on signage, paid for by Company, in relation to the DEF Area and other sponsorship recognition signs, as determined by the City. The City agrees it shall not grant signage rights to any other Company for any other main facility of the Project but may include other Company's sponsorship recognition signs.
4. No Joint Venture. Nothing herein contained shall be construed to place the parties in a relationship of partners or joint venturers and neither party shall have the power to obligate or bind the other in any manner whatsoever.
5. Term. The exclusive recognition rights of this Agreement shall commence on January 1, 2024 and continue until June 30, 2034. The City is not required to renew the contract at such time and may at its sole discretion and option allow this Agreement to expire. The Company shall have the right of first refusal for future recognition rights for the project's DEF Area and as the exclusive Company main facility sponsor at the Project. Until June 30, 2034, the City shall not enter into an agreement with another entity for recognition rights for the Project DEF Area or with a Company for another main facility sponsorship without first offering the Company the opportunity to contract for said recognition rights on substantially the same terms as offered to such other entity pursuant to this Section. If the City chooses to pursue an agreement with another entity, the City must provide notice to the Company within ten (10) business days of reaching a tentative agreement with the other entity. The notice shall include the terms and conditions of the tentative agreement with the other entity. The Company will have ten (10) days after its receipt of the City's notice to respond in writing either expressing the Company's desire to either (1) enter into an agreement with substantially similar terms and conditions as the agreement with the other entity, in which case the City may only contract for said recognition rights with the Company and must not enter into the proposed contract with the other entity; or (2)

waive the Company's right of first refusal. If the City does not receive a response from the Company within ten (10) business days after the City's notice, such non-response shall be deemed to be the Company's waiver of its right of first refusal, and the City may enter into the agreement with the other entity.

6. Voluntary and Knowing Action. The Parties, by executing this Contract, state that they have carefully read this Contract and understand fully the contents hereof; that in executing this Contract they voluntarily accept all terms described in this Contract without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound hereby.
7. Authorized Signatories. The Parties each represent and warrant to the other that (1) the persons signing this Contract are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Contract against it; each PARTY indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
8. Notices. All notices and other communications required or permitted under this Contract shall be in writing, and hand delivered or sent by registered or certified mail, return-receipt requested, postage prepaid, or by overnight delivery service and shall be effective upon receipt at the following addresses or as either Party shall have notified the other Party. The Parties' representatives for notification for all purposes are:

CITY:

Tom Pagel
City Administrator
420 North Pokegama Avenue
Grand Rapids, MN 55744
Phone: 218.326.7626
Email: tpagel@grandrapidsmn.gov

COMPANY:

Tate Johnson
President, Yanmar Compact Equipment North America
840 Lily Lane
Grand Rapids, MN 55744
Phone: 763.242.6369
Email: tate_johnson@yanmar.com

9. 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.

10. Indemnification.

- a. Company shall indemnify, protect, save, and hold harmless City, and its respective officers, directors, employees and members and agents, from and against any claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable to or caused by the negligent or otherwise wrongful acts or omissions. All indemnification obligations shall survive termination, expiration or cancellation of this Contract. Nothing in this Contract shall be construed to waive any immunities or limitations to which City is entitled under Minn. Stat. Chapter 466 or otherwise.
- b. City shall indemnify protect, save, and hold harmless the Company, and its respective officers, directors, employees and members and agents, from and against any claims, liability, damages, costs, judgments, or expenses, including reasonable attorney's fees, to the extent attributable to or caused by the negligent or otherwise wrongful acts or omissions of City or its agents, employees, contractors or subcontractors with respect to City's performance of its obligations under this Contract. All indemnification obligations shall survive termination, expiration or cancellation of this Contract.

11. 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 Project 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 Company, or in the event that the City is no longer authorized by law to own the Property or operate the Project.

- 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 Project for the Governmental Program. The City will give the Company 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 Company 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.
- h. Annual review. The City and/or its assigns, will meet with Company annually to review performance.

12. 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. City agrees, upon direction from the State of Minnesota, Commissioner of Minnesota Management and Budget (Commissioner), to take such action and furnish such documents as the Commissioner determines to be necessary to ensure that interest paid on the Tax-Exempt Bonds used to improve the Property is exempt from federal taxation.
- c. The Company 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.
- d. Within 30 days of the end of each 12 month period in the Agreement term, starting on the Effective Date of the Agreement (each such 12 month period shall

be referred to herein as “Agreement Year”), City agrees to provide the Commissioner of the Department of Management and Budget, his or her successor or assigns, a reconciliation of all the rent received and the operating and maintenance expenses for the Grand Rapids IRA Civic Center (“Facility”) for the then just-completed Agreement Year (“Reconciliation Statement”). If for any Agreement Year the rent collected for Facility for the prior Agreement Year exceeds the operating and maintenance expenses for the Facility for such prior Agreement Year, based upon the City’s Reconciliation Statement, then City shall immediately refund to Company any overpayment. The Company shall provide evidence of such refund to the Commissioner of the Department of Management and Budget, his or her successor or assigns, within 30 days of the end of such Agreement Year.

13. 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.
14. Assignment. This Agreement may not be assigned by either Party without the written consent of the other Party.
15. 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 Company and approved in writing by the Commissioner of Minnesota Management and Budget.
16. Records—Availability and Retention. Pursuant to Minn. Stat. § 16C.05, subd. 5, the Company 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 Company and involve transactions relating to this Contract. The Company agrees to maintain these records for a period of six years from the date of termination of this Agreement.
17. 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.
18. 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.

19. Governing Law. This Contract shall be deemed to have been made and accepted in Stearns 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.
20. 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 Company 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 Company understands that all of the data created, collected, received, stored, used, maintained or disseminated by the Company in performing those functions that the City would perform is subject to the requirements of the Act, and the Company must comply with those requirements as if it were a government entity. This does not create a duty on the part of the Company 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.
21. 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.
22. 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.
23. 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.
24. Recitals. The Recitals set forth above are incorporated into and are made a part of this Amendment.
25. 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.

26. Survivability. All covenants, indemnities, guarantees, releases, representations and warranties by any Party of Parties, and any undischarged obligations of City and the Company arising prior to the expiration of this Contract (whether by completion or earlier termination), shall survive such expiration.
27. 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.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the PARTIES have hereunto executed this document the day and year first above written.

Yanmar Compact Equipment North America

By: _____

Date: _____

(Signature)

Title: President

Print Name: Tate Johnson

CITY OF GRAND RAPIDS:

By: _____

Date: _____

_____, Its Mayor

By: _____

Date: _____

_____, Its City Clerk

Exhibit A:
DEF Area Location

1. Effective January 1, 2024, the IRA Civic Center will be renamed 'Yanmar Arena'. This name will be used in all advertising and/or broadcasts of events that take place on the premises and all employee correspondence.
2. Company will lease to the city a compact track loader with snowblower and brush attachments for \$1 per year, with the understanding that it will be displayed outside the East Entrance doors when not in use. The city will be responsible for damages and maintenance to the equipment which will be performed by the Yanmar Company Store at a reduced rate.
3. Company will have exclusive use of the 'Viewing Suite' for all boys and girls high school hockey games, first right for youth games, and the ability to brand the suite.
4. Company will have the ability to brand the upper lobby meeting space and utilize the meeting space up to 6 times annually at no cost.
5. Company will have an ad on one entire Zamboni for branding.
6. Company will have center-ice logos in all three ice sheets.
7. Company will have two (2) wall sign ads in the West Venue.
8. Company will have two (2) dasher board ads in the West Venue.
9. Company may install window decals on the entrance doors, entrance building signage, an informational kiosk in the main lobby, and supply City employee apparel at no cost.
10. Company is responsible for the production of all advertising materials.