

## LEASE AGREEMENT

### Joint Park Maintenance Facility

**THIS AGREEMENT** is by and between the City of Hastings, a Minnesota Municipal Corporation (the "City") and Independent School District No. 200, Hastings, Minnesota (the "School").

**NOW, THEREFORE**, in consideration of the promises of the parties to this Agreement, the parties recite and agree as follows:

#### ARTICLE I

##### RECITALS

**Section 1.01. Recitals.** As a basis for the obligations undertaken by the parties to this Agreement, the parties recite and agree as follows:

(1) The parties desire to provide for the planning, design and construction of a joint park maintenance facility, all of which is referred to in this Agreement as the "Project".

(2) The purpose of this Agreement is (a) to establish the obligations of each of the parties with respect to the Project, including but not limited to, the payment of the capital cost of the Project and operation and maintenance costs of the facility; (b) to establish procedures governing the planning, design, construction and reconstruction of the Project; and (c) to establish a time schedule for the Project and the various elements thereof.

(3) Each of the parties has authority to enter into this Agreement pursuant to Minn. Stat. §471.59 and has duly authorized its execution and delivery; and, upon due authorization, execution and delivery by the other parties hereto, represents and warrants that this Agreement will be a valid and binding obligation of such party.

(4) The Project will be constructed on land belonging to the City and currently utilized as its park maintenance facility on property legally described on attached *Exhibit "A"*. The School will be permitted access to the facility at all times (24 hours per day, 365 days per year) for the purpose of using the park maintenance facility.

#### ARTICLE II

##### THE IMPROVEMENTS

**Section 2.01. Lead Agency.** The City shall be responsible for the detailed planning, design, construction and reconstruction of the Project, subject to the terms and conditions of this Agreement and applicable State law.

**Section 2.02. Compliance With State Law, Etc.** The Work shall be performed by the City in accordance with all applicable federal, State and local laws, rules, regulations and ordinances.

**Section 2.03. Consulting Engineer.** The City shall employ a Consulting Engineer to plan, design, prepare Construction Plans for, evaluate construction bids for, and supervise the construction of the Project, subject to the terms and conditions of this Agreement.

**Section 2.04. Subsequent Approvals.** The City, through its Consulting Engineer, shall keep the School advised as to the progress of the Work. The School shall give requests by the City for approvals under this Agreement its immediate attention and shall act upon such requests within not more than 30 days or such other mutually agreed upon period to enable the City to comply with this Agreement.

**Section 2.05. Supplemental Agreements and Change Orders.** Each party shall appoint a member of its staff who will be authorized to give consent to Change Orders of up to \$500.00.

### ARTICLE III

#### PROJECT FUNDING

**Section 3.01. Project Cost.** It is anticipated that the Project will not exceed \$2,535,000.00.

**Section 3.02. Funding.** City agrees to issued its Series 2001A twenty year General Obligation Improvement Bonds in the approximate amount of \$2,535,000.00 to be used for the construction of the Project.

**Section 3.03. School Lease Costs.** During the term of this Agreement, School's annual lease payment shall be equal to 45 percent of the annual bond payments for the Series 2001A Bonds or any successor bonds. School shall make its payment to the City in a timely fashion so that the School's payment is available to the City to be used to make the annual bond payment.

**Section 3.04. City Costs.** The remaining 55 percent of the annual bond payment for Series 2001A Bonds shall be paid by the City. Attached to this Agreement as "*Exhibit B*" is a proposed bond payment schedule for the Series 2001A Bonds.

**Section 3.05. Refinancing and Prepayment of Bonds.** City shall not cause the Series 2001A bonds to be refinanced or prepaid without the prior consent of School, which consent shall not be unreasonably withheld.

## ARTICLE IV

### CLAIMS

*Section 4.01. Independent Contractor.* In entering into this Agreement, the City is acting on its own behalf, and neither the City nor any officer, employee, consultant, agent or contractor of the City are or shall be deemed to be an agent or employee of the School. All claims that arise under the Worker's Compensation Act of the State on behalf of the employees of the City or its consultants, agents or contractors while engaged in doing Work under this Agreement and all claims made by any third parties as a consequence of any act or omission on the part of the employees of the City or its consultant, agents or contractors while so engaged shall in no way be the obligation or responsibility of the School.

*Section 4.02. Contamination.* Each party shall be responsible for the clean up costs of any contamination that is caused by that party. In the event that contamination is discovered and it cannot be determined which party is responsible for the contamination, the cost of clean up shall be shared equally by the parties.

*Section 4.03. Other Liability.*

(1) Each party to this Contract shall be liable 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 parties, their officers, employees or agents.

(2) Liability of the City or School shall be governed by the provisions of the Municipal Tort Claims Act, Minn. Stat. Ch. 466, and other applicable laws.

## ARTICLE V

### ADMINISTRATIVE PROVISIONS

*Section 5.01. Books and Records.* The City shall keep full, accurate and complete books and records relating to the planning, design, construction and reconstruction of the Project and the receipt, investment and expenditure all City and School moneys with respect to the Project, in accordance with generally accepted accounting principles. Such books and records and all related documents and accounting procedures are subject to review and examination by the School.

*Section 5.02. Conflicts of Interest.* No member of the governing body or other official of any party shall have any financial interest, direct or indirect, in this Agreement or any contract, agreement or other transaction contemplated to occur or be undertaken hereunder, nor shall any such member of the governing body or other official participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

**Section 5.03. Insurance.** City shall cause the Project to be properly insured. The cost of insuring the Project shall be paid 55% by City and 45% by School.

**Section 5.04. Damage or Loss.** In the event there is damage to the Project, which damage is covered by insurance, insurance proceeds shall be used to repair or replace the damaged property. If the insurance proceeds are insufficient to fully cover the cost of repair or replacement, and the parties both agree to repair or replace the property, the parties shall make up the difference in the percentages of 55% City; 45% School.

If the Project is totally destroyed and the parties agree not to rebuild the Project, all insurance proceeds received shall be applied first to any bonds outstanding which were used to construct or improve the Project and which bonds have not been repaid. After insurance proceeds have been set aside to repay any such bonds, any excess insurance proceeds shall be divided City 55%; School 45%.

**Section 5.05. Law Governing.** This Agreement shall be governed and construed in accordance with the laws of the State of Minnesota.

**Section 5.06. Benefit of this Agreement.** This Agreement and the provisions hereof shall inure to the benefit only of the City and the School and shall not be construed to confer any rights or benefits upon any other persons as third party beneficiaries or otherwise.

**Section 5.07. Severability; Interpretation.**

(1) If any provision of this Agreement shall be held to be unenforceable to contrary to law by any court or competent jurisdiction, or shall be mutually determined to be unenforceable by the parties upon the advice of their legal counsel, the remaining provisions hereof shall remain in full force and effect.

(2) This Agreement shall be construed to give the fullest effect to the intentions of the parties as expressed herein.

**Section 5.08. Entire Agreement.** This Agreement supersedes any prior written memorandum or oral understanding among the parties relating to the Project. Amendments to Agreement must be in writing.

**Section 5.09. Unavoidable Delay.** The date specified in this Agreement for the performance of any action by any party shall be extended by a period equal to the period of any Unavoidable Delay relating thereto; provided that an Unavoidable Delay with respect to one performance date shall not automatically extend the time of performance by a subsequent date of any other action required of either party.

**Section 5.10. Effective Date.** This Agreement shall become effective upon execution and delivery by all of the parties and shall remain in effect for a term of 21 years thereafter, unless terminated by any of the parties as set forth in Section 5.12.

**Section 5.11. Termination.** This Agreement may not be terminated by either party until any and all bonds issued for the construction of the building have been paid in full. When such bonds have been paid in full, this Agreement may be terminated by either party upon at least twelve months written notice to the other party.

**Section 5.12. Completion of Bond Payments.** Once the Series 2001A Bonds, or their successors, have been paid in full, School shall not be required to make any annual payment as required under Section 3.03. School shall pay only those other costs called for by this Agreement and any subsequent Agreement that may be made between the parties.

**Section 5.13. Option to Buy 45% Interest.** At any time after the Series 2001A Bonds, or their successors, are paid in full, School can elect to become the owner of an undivided 45% interest in the Project, excluding the real estate. School can exercise this option by delivering written notice to the City and tendering payment of \$1.00. Upon the exercise of this option to buy, the terms of this Agreement will remain in effect, including the provisions regarding termination of the Agreement.

**Section 5.14. Effect of Termination.** If School exercises its option to buy a 45% interest in the Project, upon termination of this Agreement by either party after the bonds have been paid, the parties shall agree on the value of only the building as of the last date of this Agreement, i.e., the last day after the twelve month notice. No land value will be included in this value. It is agreed the land value will not be included since the City owned the land prior to this Project. The School's share shall be 45 percent of the value of only the building determined as of the last date of this Agreement. The School's 45 percent shall be paid within ninety days after such time that the City sells the property to a third party. The School's 45 percent share shall not accrue interest from the last date of the Agreement until such time as it is paid pursuant to this Agreement. It is the intent of both parties that upon the termination of this Agreement, the City shall not be required to pay the School District for its share until such time the City sells to a third party the property on which this Project is located.

**Section 5.15. Amendment of Agreement.** This Agreement cannot be amended except by written agreement of both parties.

**Section 5.16. Capital Improvements and Repairs.** During the term of this Agreement, if any capital improvements or structural repairs are needed to preserve or protect the integrity of the Project, the costs thereof shall be paid 55 percent by the City and 45 percent by the School. No capital improvements or structural repairs shall occur unless both parties agree. Both parties agree that they will not unreasonably withhold their consent to any reasonable request for capital improvements or structural repairs.

**Section 5.17. Operating Agreement.** The parties may, by separate agreement, provide for the daily routine maintenance of the Project and providing for the day to day operation of the Project.

**Section 5.18. Assignment and Subletting Prohibition.** This Agreement may not be assigned or sublet by School District to any third party without the prior written consent of City. City will have no obligation to consent to any such request from School.

**Section 5.19. Titles of Articles and Sections.** Any titles of the several articles and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

**Section 5.20. Notices and Demands.** Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if and when it is dispatched by certified mail, postage prepaid, return receipt requested, or delivered personally, and

(1) in the case of the City, is addressed to or delivered personally to the following individuals:

*City of Hastings  
101 East 4<sup>th</sup> Street  
Hastings, Minnesota 55033  
Attn: Director of Parks and Recreation*

*With a copy to:*

*City Attorney  
Fluegel & Moynihan P.A.  
1303 South Frontage Road, Suite 5  
Hastings, Minnesota 55033*

(2) in the case of the School, is addressed to or delivered personally to the School at:

*Independent School District No. 200  
9th and Vermillion Streets  
Hastings, MN 55033  
Attn: Superintendent*

*With a copy to:*

Dated this 18th day of JUNE, 2001.

**CITY OF HASTINGS,**  
*a Minnesota Municipal Corporation*

By: Michael D. Werner  
Michael D. Werner, Mayor

(SEAL)

By: David M. Osberg  
David M. Osberg, City Administrator

### ACKNOWLEDGMENT

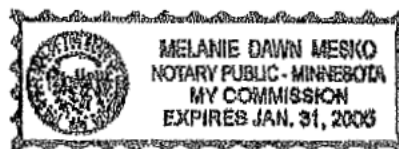
STATE OF MINNESOTA)

) SS.

COUNTY OF DAKOTA )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of June, 2001, by **Michael D. Werner** and **David M. Osberg**, the Mayor and City Administrator of the City of Hastings, a Minnesota Municipal Corporation.

Christina Musko  
NOTARY PUBLIC



Dated this 14th day of June, 2001.

*INDEPENDENT SCHOOL DISTRICT NO. 200,  
Hastings, Minnesota*

By: Donald G. May  
Donald G. May, its Chair

By: Ann Skoglund  
Ann Skoglund, its Clerk

**ACKNOWLEDGMENT**

**STATE OF MINNESOTA** )  
 ) ss.  
**COUNTY OF DAKOTA** )

The foregoing instrument was acknowledged before me this 14 day of June, 2001,  
by Donald G. May and Ann Skoglund, the Chair and Clerk of Independent School  
District No. 200, Hastings, Minnesota.

Shirley A. Meier  
NOTARY PUBLIC



**THIS INSTRUMENT WAS DRAFTED BY:**  
**FLUEGEL & MOYNIHAN P.A.**  
1303 South Frontage Road, Suite 5  
Hastings, MN 55033  
(SMM)



## **Exhibit "A"**

**That part of the Northeast quarter of the Southwest quarter of Section 28, Township 115, Range 17, commencing at the Northwest corner of Lot 4, Block 15, William Allison's Addition to the Town of Hastings; thence North 225 feet to the Northwest corner of Lot 1, Block 15 of said William Allison's Addition to the Town of Hastings; thence West 207.82 feet; thence South 225 feet to a point 207.82 feet West of the Northwest corner of said Lot 4, Block 15, William Allison's Addition to the Town of Hastings; thence East 207.82 feet to the point of beginning in Dakota County, Minnesota.**

