

JOINT POWERS AGREEMENT

EDUCATION FACILITY IN WINONA, MINNESOTA

This Agreement is made and entered into this ___ day of _____ 2023, by and among Independent School District No. 299 (Caledonia); Independent School District No. 227 (Chatfield); Independent School District No. 533 (Dover-Eyota); Independent School District No. 300 (La Crescent-Hokah); Independent School District No. 229 (Lanesboro); Independent School District No. 857 (Lewiston-Altura); Independent School District No. 238 (Mabel-Canton); Independent School District No. 2899 (Plainview-Elgin-Millville); Independent School District No. 239 (Rushford-Peterson); Independent School District No. 297 (Spring Grove); Independent School District No. 858 (St. Charles); Independent School District No. 811 (Wabasha-Kellogg), and the Hiawatha Valley Education District (hereinafter referred to as the “HVED”), all being school districts and governmental units of the State of Minnesota. Each of the foregoing independent school districts shall hereinafter be referred to as a “Participating Independent District” or collectively the “Participating Independent Districts.” The Participating Independent Districts and the HVED shall hereinafter collectively be referred to as the “Collaborating Districts.”

RECITALS

WHEREAS, the HVED provides special education and related services, alternative education programs and other education-related programs and services to children who are enrolled in the Participating Independent Districts; and

WHEREAS, the Participating Independent Districts are members of the HVED; and

WHEREAS, the parties hereto desire to cooperatively and jointly exercise their powers to establish a framework to finance (i) the acquisition of land and an existing building located in

the City of Winona, Minnesota, and (ii) the construction, renovation and equipping of the existing building into a new education facility (hereinafter the “Education Facility”) which shall be used by the HVED to provide special education and related services, alternative education programs and other services to the Participating Independent Districts, pursuant to the terms and conditions described below.

NOW, THEREFORE, in consideration of the promises and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

(The remainder of this page is intentionally left blank.)

ARTICLE I

AUTHORITY; PURPOSE

Section 1. AUTHORITY. This Agreement is entered into by and among the Collaborating Districts pursuant to Minn. Stat. § 471.59, as amended, which authorizes two or more governmental units, by agreement entered into through action of their governing bodies, to jointly or cooperatively exercise any power common to the contracting parties or any similar powers.

Section 2. PURPOSE. The purpose of this Agreement is to establish a framework to finance the acquisition of real property and the construction, renovation and equipping of the Education Facility, which shall be used by the HVED to provide special education and related services, alternative education programs and other education-related programs and services to the Participating Independent Districts.

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ARTICLE II
GOVERNANCE

Section 1. GOVERNING BOARD. The HVED was created pursuant to a Joint Powers Agreement dated September 1, 1988, as amended (the “HVED Agreement”). The member school districts of the HVED are the Participating Independent Districts in this Agreement. The control and management of the HVED is vested in a Governing Board established pursuant to the HVED Agreement. The Governing Board has the authority to function as an entity separate and apart from any of the Participating Independent Districts and generally to act in furtherance of the Participating Independent Districts’ joint interests and intentions hereunder.

Section 2. POWERS OF THE GOVERNING BOARD. The Governing Board has the general charge of the business of the HVED and the ownership of its facilities, fixtures and personal property. The Governing Board shall take such action as it deems necessary and proper to accomplish the purposes of the HVED, or any other action necessary and incidental to the implementation of said purposes or actions. The Governing Board shall have such additional powers as specified in this Agreement, including all powers necessary to provide recommendations on issues relating to the acquisition, establishment, operation, management and control of the Education Facility.

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ARTICLE III

ACQUISITION OF PROPERTY; MAINTENANCE AND UTILITIES; CONSTRUCTION CONTINGENCY FUND

Section 1. PURCHASE AND SALE OF REAL PROPERTY. Subject to approval by the governing board of the HVED and the satisfaction or waiver contingences set forth in the purchase agreement, Winona Mall, LLC, a Minnesota limited liability company, (hereinafter “Seller”) shall convey to the HVED, and the HVED will purchase from the Seller, for the purchase price of \$4,200,000.00, land and an existing building located in the City of Winona, Minnesota, and more particularly described in the attached **EXHIBIT A** (hereinafter the “Property”) which is incorporated herein by reference. The existing building that is to be constructed, renovated, improved and equipped to serve as the Education Facility is located on the Property.

Section 2. MAINTENANCE OF EDUCATION FACILITY GROUNDS. The HVED shall provide usual and customary lawn mowing and lawn maintenance services on the Property. HVED shall maintain the parking lots, driveways, and the sidewalks of the Education Facility in reasonable repair which shall include such activities as seal coating, striping, crack filling and similar maintenance, resurfacing, or reconstruction. HVED shall provide snow removal for the parking lots, driveways and sidewalks located on the Property. The foregoing maintenance costs for the Education Facility shall be apportioned between all the Participating Independent Districts as operating costs in the manner set forth in Article V, Section 4(a).

Section 3. UTILITY COSTS. The HVED will be responsible for utility costs for the Education Facility. The utility costs for the Education Facility shall be apportioned between all the Participating Independent Districts as operating costs in the manner set forth in Article V, Section 4(a).

Section 4. CONSTRUCTION CONTINGENCY FUND. The HVED shall use funds on hand (not proceeds from the lease-purchase financing described in Article IV hereof) to establish a construction contingency fund in an amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000) (the “Contingency Fund”). Funds in the Contingency Fund may be allocated by the HVED to pay for unforeseen or unexpected costs related to the construction, renovation, improvement and equipping of the Education Facility. Any funds remaining in the Contingency Fund upon final completion of the project shall be transferred to the general fund.

ARTICLE IV

PROJECT FINANCING AND PARAMETERS; RIGHTS SUBORDINATE TO LEASE AGREEMENT

Section 1. LEASE-PURCHASE FINANCING; RIGHTS OF THE LESSOR OR TRUSTEE. It is mutually agreed and understood that the Property, including the Education Facility, is contemplated to be acquired, constructed, renovated, improved and equipped by entering into a Lease-Purchase Agreement (the “Lease Agreement”) between the HVED and a lessor or an indenture trustee (the “Trustee”) to be named, to finance said acquisition, construction, renovation, improvement and equipping. The rights of the parties under this Agreement shall be subject to and subordinate to the rights of the lessor or the Trustee under the Lease Agreement.

Section 2. FINANCING PARAMETERS. It is mutually agreed and understood that the principal amount of the Lease Agreement shall not exceed Fifteen Million Dollars (\$15,000,000) and the term of the Lease Agreement shall not exceed fifteen (15) years. The provisions of this section shall not apply to any refunding of the Lease Agreement.

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ARTICLE V

LEASE PAYMENT ALLOCATION; CONTINUING CAPITAL COSTS; OPERATING COSTS; DISSOLUTION

Section 1. LEASE PAYMENT ALLOCATION. The lease payments on the Lease Agreement described in Article IV hereof shall be apportioned among the Participating Independent Districts using the method of apportionment specified in **Exhibit B**, attached hereto and fully incorporated herein by reference. Each Participating Independent District may pay its share of the payments under the Lease Agreement from proceeds of a lease levy or from other school district fund sources. To the extent lease levy authority is exercised by one or more of the Participating Independent Districts in any year during the term of the Lease Agreement, prior to August 15 of each year, the HVED shall give written notice to each Participating Independent District of the maximum amount of the leasing levy, calculated based on the formula specified in **Exhibit B**, authorized to be certified by that Participating Independent District under this section for the following fiscal year. This section may be amended by resolutions adopted by the school boards of the Collaborating Districts if the amendment does not violate the provisions of the Lease Agreement or other documents relating to financing for the Property, including the Education Facility.

Section 2. TITLE AFTER PAYMENT OF LEASE. Unless this Agreement is amended to the contrary, at the termination of the Lease Agreement and after the repayment of the financing described above, the title to the real and personal property financed shall vest in the HVED.

Section 3. OBLIGATION TO MAKE LEASE PAYMENTS; TIMING OF PAYMENTS TO HVED. The Collaborating Districts recognize that the payments under the Lease Agreement will be paid by the Participating Independent Districts through lease levies

and other fund sources pursuant to the formula in Article V Section 1, hereof. Lease payments pursuant to the Lease Agreement which are not eligible for the lease levy shall be paid by the Participating Independent Districts using other fund sources. Each Participating Independent District shall pay to the HVED one-half of the amount of its apportioned share of that year's payment under the Lease Agreement by not later than August 15, and one-half of its apportioned share of that year's payment under the Lease Agreement by not later than January 15. Each payment may consist of proceeds from a lease levy, funds from other school district fund sources, or both.

Section 4. CONTINUING CAPITAL COSTS; OPERATING COSTS

(a) The Participating Independent Districts shall be apportioned operating costs for the Education Facility and the Property in accordance with the HVED's current practice and procedure for allocating operating costs.

(b) The Participating Independent Districts shall be apportioned continuing capital costs for the Education Facility and the Property pursuant to the formula set forth in **Exhibit B**, attached hereto.

Section 5. DISSOLUTION OF HVED AFTER TERMINATION OF THE LEASE AGREEMENT. In the event the HVED elects to dissolve after repayment of the financing described above, the Property, including the Education Facility, shall be sold and the proceeds of the sale apportioned in accordance with the HVED Agreement, as amended, or such other written agreement of all Collaborating Districts. The terms of this section shall survive the withdrawal of any Participating Independent District from this Agreement or the termination of this Agreement.

ARTICLE VI

DURATION; MEMBERSHIP; TERMINATION; BREACH; LIABILITY; INSURANCE

Section 1. DURATION. This Agreement shall be perpetual in duration unless terminated pursuant to provisions of this Agreement, as amended, or any state law terminating the Agreement.

Section 2. ADDITION OF OTHER DISTRICTS; REALLOCATION. An independent school district seeking membership in the HVED shall, as a condition of being approved as a member pursuant to applicable state law and the HVED Agreement, agree in writing to be added to this Agreement as a Participating Independent District and to be bound by the terms of this Agreement. Upon becoming a Participating Independent District under this Agreement, the percentages apportioned pursuant to Article V, Section 1 of this Agreement shall be adjusted to account for the additional Participating Independent District.

Section 3. WITHDRAWAL OF PARTICIPATING INDEPENDENT DISTRICTS.

Subdivision, 1. Procedure. A Participating Independent District may only withdraw from this Agreement if it also withdraws as a member school district of the HVED in the manner provided in the HVED Agreement. Subject to the terms of Article VI, Section 3, Subdivision 2, below, a Participating Independent District may withdraw from this Agreement effective at the end of any fiscal year by resolution adopted by a majority vote of the full membership of its school board and by formal written notice to the school board of each other Participating Independent District and to the Executive Director of the HVED (the “Executive Director”). Such formal written notice shall be provided to each school board and the Executive Director no less than six (6) months prior to the effective date of withdrawal. The notice shall

include a certified copy of the adopted withdrawal resolution. A withdrawal shall only be permitted as specified in this section.

Subdivision 2. No Withdrawal Permitted During Lease Term.

A Participating Independent District shall not be permitted to withdraw from this Agreement prior to June 30 of the year in which full payment of the Lease Agreement, or any refunding of the Lease Agreement, is made.

Subdivision 3. No Distribution to Withdrawing Participating Independent District. Except as provided in this Article VI, Section 3, Subdivision 3, a withdrawing Participating Independent District shall not be eligible for the distribution of any property or assets at the time of withdrawal. A Participating Independent District who has withdrawn from this Agreement shall be entitled to receive its apportioned share of the proceeds from the sale of the Education Facility (and the Property) in accordance with Article V, Section 5, hereof.

Section 4. TERMINATION OF AGREEMENT. After the payment in full of the Lease described in Article IV hereof, this Agreement may be terminated if the boards of all Collaborating Districts adopt written resolutions approving such termination. Upon termination, all funds and property remaining after payment of all outstanding debts and obligations, including the Education Facility, the Property, and equipment of any nature, shall become the property of the HVED. To the extent permitted by law, the termination shall not affect the continuing liability of present or former Collaborating Districts for indebtedness incurred prior to the termination, or for other continuing obligations, including unemployment compensation.

Section 5. BREACH OF AGREEMENT; MEET AND CONFER. Any Collaborating District breaching this Agreement and given written notice of the breach and the

nature thereof shall have fifteen (15) days in which to cure the breach. The breaching Collaborating District shall be liable for any expenses incurred by any other Collaborating District to enforce the provisions of this Agreement and any damages incurred by other Collaborating Districts as a result of the breach. In the event a breach of this Agreement involves the failure by a Participating Independent District to pay any or all of its apportioned share of any payment under the Lease Agreement, representatives of each Collaborating District shall meet as soon as practicable following said breach and determine how to address any resulting shortfall in the ability to make payments under the Lease Agreement. The unpaid apportioned share of the breaching Participating Independent District shall be apportioned among the non-breaching Participating Independent Districts in the manner set forth in Article V, Section 1, hereof. The payment of the breaching Participating Independent District's apportioned share by the non-breaching Participating Independent Districts shall not relieve the breaching Participating Independent District from liability for payment of the unpaid share or from any damages incurred by a Participating Independent District as a result of the breach.

Section 6. LIABILITY. No Participating Independent District shall be liable for the acts or omissions of the HVED and the HVED shall not be liable for the acts or omissions of a Participating Independent District. Except as provided in Article VI, Section 5, hereof, no Participating Independent District shall be liable for the acts or omissions of another Participating Independent District. The liability and the monetary limits of liability of the HVED, the Participating Independent Districts, their officers, employees, representatives, and agents shall be governed by the Municipal Tort Claims Act, (Minnesota Statutes, Chapter 466, as amended) and other applicable law.

Section 7. INSURANCE.

Subdivision 1. Property Insurance. The HVED shall maintain at its expense property insurance on the Education Facility and its personal property, which will be an operating cost under Article V, Section 4(a) of this Agreement.

Subdivision 2. Liability Insurance. The HVED shall maintain at its expense liability insurance in not less than the statutory maximum liabilities for school districts, which will be an operating cost under Article V, Section 4(a) of this Agreement.

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ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 1. CAPTIONS. The captions of the provisions of this Agreement are for convenience only and shall not be considered or referred to concerning questions of interpretation or construction.

Section 2. AMENDMENTS TO THIS AGREEMENT. Amendments to this Agreement may be proposed by the board of any Collaborating District. Notice of proposed amendments shall be sent to all Collaborating Districts. The proposed amendment shall not become effective until it has been approved and executed by not less than two-thirds of all the Collaborating Districts. An amendment approved under this Section shall be an addendum to this Agreement.

Section 3. SAVINGS CLAUSE. Should any provision or article of this Agreement be found unlawful, the other provisions of this Agreement shall remain in full force and effect if by doing so the purposes of this Agreement, taken as a whole, can be made operative. Should any such provision or article be found unlawful, representatives of the boards of the Collaborating Districts shall meet for the purpose of arriving at an agreement on a lawful provision to replace the unlawful provision or article. The newly agreed upon provision or amendment must be approved by the boards of the Collaborating Districts by resolutions adopted in the manner specified in this Article VII for the adoption of amendments.

Section 4. NOTICES. All notices required or permitted to be given by a Collaborating District shall be given by the clerk of its board. The notice shall be in writing and shall be sent by first class mail or electronic mail to the administrative offices of the board of a Collaborating District. A notice shall be timely if postmarked or emailed on the day it is

due. In the case of a notice requiring board action, a certified copy of the resolution, motion or minutes of the school board specifying the board action shall be sent with the notice.

Section 5. ENTIRE AGREEMENT; APPLICABLE LAW. This Agreement contains the entire agreement between the parties. No party has relied upon any statements or promises that are not stated in this Agreement. This Agreement shall be construed and interpreted in accordance with and be subject to the laws of the State of Minnesota.

Section 6. EXECUTION IN COUNTERPARTS; ELECTRONIC SIGNATURES; EFFECTIVE DATE OF AGREEMENT. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together shall constitute the same and whole instrument. This Agreement shall become effective upon its approval by the boards of each Collaborating District. The electronic signatures of the Board Chair and the Clerk to this Agreement shall be as valid as an original signature of such party and shall be effective to bind the Collaborating District.

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IN WITNESS WHEREOF, the officers indicated below of the Collaborating Districts have signed this Agreement by authority of their respective boards.

Approved at a meeting of the Governing Board thereof held on the _____ day of _____, 2023

HIAWATHA VALLEY EDUCATION DISTRICT

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the School Board thereof held on the _____ day of _____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 299
(CALEDONIA)**

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the School Board thereof held on the _____ day of _____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 227
(CHATFIELD)**

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the School Board thereof held on the _____ day of _____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 533
(DOVER-EYOTA)**

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the School Board thereof held on the _____ day of _____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 300
(LA CRESCENT-HOKAH)**

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the School Board thereof held on the _____ day of _____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 229
(LANESBORO)**

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the School Board thereof held on the _____ day of _____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 857
(LEWISTON-ALTURA)**

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the
School Board thereof held on
the _____ day of
_____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 238
(MABEL-CANTON)**

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the
School Board thereof held on
the _____ day of
_____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 2899
(PLAINVIEW-ELGIN-MILLVILLE)**

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the
School Board thereof held on
the _____ day of
_____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 239
(RUSHFORD-PETERSON)**

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the
School Board thereof held on
the _____ day of
_____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 297
(SPRING GROVE)**

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the
School Board thereof held on
the _____ day of
_____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 858
(ST. CHARLES)**

By: _____
Board Chair

By: _____
Clerk

Approved at a meeting of the
School Board thereof held on
the _____ day of
_____, 2023

**INDEPENDENT SCHOOL DISTRICT NO. 811
(WABASHA-KELLOGG)**

By: _____
Board Chair

By: _____
Clerk

EXHIBIT A

DESCRIPTION OF REAL ESTATE

Lot 1, Block 1, Winona Mall Second Subdivision, according to the plat thereof on file in the office of the County Recorder, Winona County, Minnesota.

EXHIBIT B

ALLOCATION FORMULA

Each of the lease payments on the Lease Agreement described in Article IV, hereof, shall be apportioned among the Participating Independent Districts using the following method of apportionment:

1. A dollar amount representing twenty percent (20%) of each annual lease payment shall be evenly divided among the Participating Independent Districts; and

2. A dollar amount representing eighty percent (80%) of each annual lease payment shall be allocated among the Participating Independent Districts based on the average of each Participating Independent District's percentage of the total adjusted pupil units and unduplicated child count of all Participating Independent Districts.

3. In the event that the number of Participating Independent Districts changes, the "12" in this equation will be changed to reflect the then current number of Participating Independent Districts.

4. For purposes of this Exhibit B, the number of "Adjusted Pupil Units" for each Participating Independent District shall be obtained from the most recent report of actual (not estimated) adjusted pupil units in the General Education Report (or any successor report or document providing the same information) prepared by the Minnesota Department Education ("MDE"). By way of example, currently (as of July 17, 2023) the most recent report of actual (not estimated) adjusted pupil units is MDE's General Education Report dated December 2022.

5. For purposes of this Exhibit B, the "Unduplicated Child Count" for each Participating Independent District shall be obtained from the December 1 child count maintained by MDE for the calendar year prior to the year that a Lease Payment is made. By way of example, if a Lease Payment were made in calendar year 2023, the December 1 unduplicated child count report by MDE for the 2022 calendar year would be used.

The following mathematical formula illustrates foregoing allocation method:

$(.2 \times \text{Amount of Annual Lease Payment} / 12)^{\frac{1}{2}} + (.8 \times \text{Amount of Annual Lease Payment} \times (\text{Adjusted Pupil Units}\%^2 + \text{Unduplicated Child Count}\%^3) / 2)$.

By way of example, and assuming that there are twelve Participating Independent Districts, if a Participating Independent District has twelve percent (12%) percent of the Participating Independent Districts' total adjusted pupil units and ten percent (10%) percent of the Participating Independent Districts' total unduplicated child count, the Participating Independent District will be responsible for one twelfth (1/12) of the first twenty percent (20%) percent of the lease payment

and the Participating Independent District's allocation of the remaining eighty percent (80%) of the lease payment will be eleven percent (11%).