

**LEASE AGREEMENT**  
**BY AND BETWEEN THE CITY OF WEST ST. PAUL**  
**AND INDEPENDENT SCHOOL DISTRICT NO. 197**  
**FOR HARMON PARK**

THIS LEASE AGREEMENT (Agreement) is made and entered into this 28 day of April, 2014, by and between the City of West St. Paul, a Minnesota municipal corporation (hereinafter referred to as City) and Independent School District No. 197, a Minnesota public corporation (hereinafter referred to as School District). Subject to the terms and condition of this Agreement and in reliance upon the covenants and representations of the parties herein contained, the parties hereby agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

**Terms.** The following terms, unless elsewhere specifically defined in this Agreement, shall have the following meanings as set forth below.

**Agreement.** "Agreement" means this Lease Agreement for Harmon Park.

**City.** "City" means the City of West St. Paul, a Minnesota municipal corporation.

**City Property.** "City Property" means the property depicted on Exhibit A.

**Harmon Park Master Plan.** "Harmon Park Master Plan" or "Harmon Park" means the area and the plan depicted on Exhibit B.

**School District.** "School District" means Independent School District 197.

**Heritage School.** "Heritage School" means Heritage E-STEM Magnet School, owned and operated by School District, located at 121 East Butler Avenue, West St. Paul.

**School District Property.** "School District Property" means the property depicted on Exhibit C. For purposes of this Agreement, School District Property does not include any property occupied by Heritage School, unless directly and explicitly noted.

**Lease Term.** "Lease Term" means the time period fifty (50) years beginning on the date first written above.

**ARTICLE 2**  
**RECITALS**

This Agreement is made with reference to the following facts and objectives:

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- A. The City owns property known as Harmon Park, generally bounded by Bernard Street, Charlton Street and Arion Street, which is used for park and recreational purposes and includes athletic fields, ice rinks, baseball and softball fields, a tennis court and green space, as well as related accessory buildings, and is depicted on Exhibit A.
- B. The School District owns and operates Heritage School, a fifth through eighth grade school and accessory athletic fields that are generally bounded by Arion Street, Bidwell Street and Bernard Street. The School District's athletic fields are used for school-related athletic purposes and include baseball and softball fields and green space and are depicted on Exhibit C.
- C. The School District Property directly abuts the City Property.
- D. The City is redeveloping Harmon Park pursuant to a Parks Master Plan and Site Plan that has been reviewed and approved by the West St. Paul City Council and by the School District. The Harmon Park Master Plan is shown on Exhibit B.
- E. The City has agreed to design, develop, construct and pay for the improvements to Harmon Park pursuant to the Harmon Park Master Plan, which includes improvements to the City Property and the School District Property.
- F. The City is willing to lease City Property to the School District, pursuant to the provisions of this Agreement.
- G. The School District is willing to lease the School District Property to the City, pursuant to the provisions of this Agreement.

**NOW, THEREFORE,** in the joint and mutual exercise of their powers as governmental units, and in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**ARTICLE 3**  
**LEASE OF CITY PROPERTY BY SCHOOL DISTRICT**

The City does hereby lease to the School District, its successors and assigns, for the Lease Term for educational, extracurricular and athletic team purposes and, all such purposes ancillary, incident or related thereto, upon that real property identified on Exhibit A. The rights granted herein shall include, but not be limited to, the construction, maintenance, repair and replacement of any facilities and improvements ancillary, incident or related thereto, under, over, across, through and upon the City Property as required pursuant to this Agreement. The rights of the School District also include the right of the School District, its contractors, agents and servants to enter upon the City Property at all reasonable times for the purposes of construction, reconstruction, inspection, repair, replacement, grading, sloping, and restoration relating to the purposes of this Agreement; to maintain the City Property, any School District improvements, together with the right to excavate and refill ditches or trenches; and to remove from Harmon Park any trees, brush, herbage, aggregate, undergrowth and other obstructions interfering with the location, construction and maintenance of any Harmon Park facilities or improvements. Any construction, reconstruction, repair, replacement, grading, sloping, and restoration or improvements made by the School District shall be approved by the City in advance.

**ARTICLE 4**  
**CITY OBLIGATIONS**

- A. **Harmon Park Improvements.** City agrees to develop, construct and pay for the improvements to Harmon Park, pursuant to the approved Harmon Park Master Plan, as depicted on Exhibit B. Any significant changes to the Harmon Park Master Plan prior to, during or after construction must be approved by the City and the School District. Following construction, the City shall own all improvements on the City Property and the School District Property including, but not limited to all structures, buildings, fences, backstops, dugouts, trails, as well as all landscaping and amenities that were installed, constructed, built, erected or are otherwise part of the Harmon Park Master Plan, whether located on the City Property or the School District Property. City shall own all future improvements it makes to Harmon Park, unless otherwise agreed to by the parties.
- B. **Reconstruction of Harmon Park Facilities and Improvements.** City agrees that it shall be responsible for any reconstruction or installation, at the sole expense of the City, unless mutually agreed to by the parties, of any future facilities and improvements located within Harmon Park, whether on City Property or School District Property. Any such future improvements shall be agreed to by the parties in writing.
- C. **Shared Use Policy.** The City agrees to comply with the terms and conditions of the Shared Use Policy adopted pursuant to Article 7 of this Agreement.
- D. **Discontinuance of Use and Right of First Refusal.** If the City permanently discontinues the use of the City Property for the operation, management, or maintenance of Harmon Park as a park, the City may, at the City's sole expense, remove any Harmon Park facilities or improvements from the City Property and grade the area, if necessary. In addition, if the City decides to sell the City Property, the City hereby gives the School District a right of first refusal to purchase the City Property. Such right of first refusal shall be effective for a period of 90 days following written notice to the School District. Upon the discontinuance of use of the City Property as a park, this Agreement shall cease. The City must provide notice of termination pursuant to Article 9.

**ARTICLE 5**  
**LEASE OF SCHOOL DISTRICT PROPERTY BY CITY**

The School District does hereby lease to the City, its successors and assigns, for the Lease Term for park purposes and, all such purposes ancillary, incident or related thereto, upon that real property identified on Exhibit C. The rights granted herein shall include, but not be limited to, the construction, maintenance, repair and replacement of any facilities and improvements ancillary, incident or related thereto, under, over, across, through and upon the School District Property as required pursuant to this Agreement. The rights of the City also include the right of the City, its contractors, agents and servants: to enter upon the School District Property at all reasonable times for the purposes of construction, reconstruction, inspection, repair, replacement, grading, sloping, and restoration relating to the purposes of this Agreement; to maintain the School District Property, any City improvements, together with the right to excavate and refill ditches or trenches; and to remove from Harmon Park any trees, brush, herbage, aggregate, undergrowth and other obstructions interfering with the location, construction and maintenance of any Harmon Park facilities or improvements. Any construction, reconstruction, repair, replacement, grading, sloping, and restoration or improvements on the School District Property shall be approved by the School District in advance.

**ARTICLE 6**  
**SCHOOL DISTRICT OBLIGATIONS**

- A. **Shared Use Policy.** The School District agrees to comply with the terms and conditions of the Shared Use Policy adopted pursuant to Article 7 of this Agreement.
- B. **Limitations on Use.**
1. School District shall not do, bring, or keep anything in or about Harmon Park that will cause a cancellation of insurance covering any building or structure on School District Property or City Property. If the rate of any insurance carried by City is increased as a result of School District's use or misuse of Harmon Park, School District shall pay to the City within ten (10) days before the date City is obligated to pay a premium on the insurance a sum equal to the difference between the original premium and the increased premium.
  2. School District shall comply with all laws, regulations, rules or ordinances concerning parks or the School District's use of Harmon Park, including, without limitation, the obligation at School District's cost to alter, maintain, or restore Harmon Park in compliance and conformity with all laws, regulations, rules or ordinances relating to the condition, use, or occupancy of Harmon Park.
  3. School District shall not use Harmon Park in any manner that will constitute waste, nuisance, or unreasonable annoyance to the residents of the City of West St. Paul. Due to the potential hazards, Harmon Park shall not be used for Heritage School classes or demonstrative instructional sessions for science experiments, industrial arts, small engine repair or similar classes. Non-hazardous activities regarding these types of classes are permitted.
  4. At its own expense, the School District may provide signage at Harmon Park upon prior written consent of the City as to the location of the sign and verbiage on the sign.
- C. **Discontinuance of Use and Right of First Refusal.** If the School District permanently discontinues the use of the School District Property for the operation, management, or maintenance of the athletic facilities

on School District Property, the School District may, at the School District's sole expense, remove (or allow the City to remove) any Harmon Park facilities or improvements from the School District Property and grade the area, if necessary. If feasible, any such facilities or improvements shall be returned to the City. In addition, if the School District decides to sell the School District Property, the School District hereby gives the City a right of first refusal to purchase the School District Property. Such right of first refusal shall be effective for a period of 90 days following written notice to the City. Upon the discontinuance of use of the School District Property as athletic facilities, this Agreement shall cease. The School District must provide notice of termination pursuant to Article 9.

## ARTICLE 7 SHARED USE POLICY

- A. Shared Use. City and School District shall adopt a Shared Use Policy that governs the use, maintenance and operation of Harmon Park and the School District Property. Such Shared Use Policy may be amended from time to time upon mutual written agreement of a designated representative of the parties.
- B. City's Rights. City shall have the exclusive right to:
1. Establish hours for Harmon Park, including the hours for the School District Property.
  2. Establish and enforce reasonable rules and regulations applicable to all users of Harmon Park.
  3. Temporarily close any portion of Harmon Park or the School District Property for maintenance purposes.
- C. Management Meetings. School District and City agree to hold regular management meetings, at least on a quarterly basis, between a School District representative and a City representative in order to discuss the conditions in Article 7, as well as any other management-related issues.
- D. Notice of Default and Remedies. If either party fails to comply with the terms and conditions of the Shared Use Policy or any other obligation contained in this Agreement, then the non-defaulting party shall give the defaulting party reasonable notice and time to comply in writing. If the defaulting party fails to comply with the written notice, then the non-defaulting party may enforce performance or may perform the term or condition at the expense of the defaulting party.

## ARTICLE 8 INDEMNITY; IMMUNITY; INSURANCE

- A. Mutual Indemnification. The parties agree to indemnify, defend and hold the other, its agents, contractors, subcontractors, employees, attorneys, Boards, Councils, volunteers and representatives harmless against and in respect of any and all claims, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties and attorneys' fees, that the party incurs or suffers, which arise out of, result from or relate to: the operation, management, or maintenance of facilities or improvements at Harmon Park pursuant to this Agreement, by the other party. In no event shall a party be responsible to indemnify the other party for any claim, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries

and deficiencies, including interest, penalties and attorneys' fees, that are incurred due to the negligence or intentional misconduct of the other party.

B. **Governmental Immunity.** Nothing contained herein shall be deemed a waiver by the either party of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by the School District, its successors or assigns, shall be subject to any governmental immunity defenses of the City and the maximum liability limits provided in Minnesota Statute, Section 466.04 subdivision 1.

C. **Insurance.**

1. The City agrees to carry general liability insurance over all improvements at Harmon Park, whether on City Property or School District Property in an amount of not less than \$1,000,000, such amount to increase to reflect the maximum liability limits contained in Minn. Stat. §466.04, as amended. The City shall name the School District as an additional insured on its policy. In the event of casualty or loss, the City shall be entitled to all insurance proceeds related to such damage or destruction of the facilities or improvements at Harmon Park, whether on City Property or School District Property.
2. School District agrees to carry general liability insurance over School District Property in an amount of not less than \$1,000,000. The School District shall name the City as an additional insured on its policy.
3. As to third party claims; for liability purposes, the parties are considered a single governmental unit and the total liability for the parties shall not exceed the limits on governmental liability for a single governmental unit as specified in Minnesota Statutes, Section 466.04, subdivision 1.

## **ARTICLE 9** **TERMINATION**

- A. **Expiration of Lease.** This Agreement shall automatically terminate upon the expiration of the Lease Term.
- B. **No Fault Termination.** Notwithstanding anything to the contrary contained in this Agreement, either party may cancel and terminate this Agreement upon sending one (1) year's advanced written notice of termination to the other party.
- C. **Default; Right to Cure; Termination.** If either party is in default on a provision of this Agreement, the non-defaulting party shall provide written notice of the default to the defaulting party. The defaulting party shall have thirty (30) days from the date of notice to cure the default. If the defaulting party fails to cure, then the non-defaulting party may immediately terminate this lease upon expiration of the cure period.

## **ARTICLE 10** **LOSS OR DAMAGE**

- A. **Casualty; Termination of Lease.** If all or a portion of Harmon Park, its facilities or improvements is damaged or destroyed by fire or other casualty and the City, by notice given to School District not later than one hundred eight (180) days after such damage or destruction, elects not to restore that portion of Harmon Park, then the School District may elect to terminate this Agreement.

- B. **Casualty; Restoration of Building.** If all or a portion of Harmon Park is damaged by fire or other casualty and the City does elect to restore it, then this Agreement shall not terminate and the City shall, at its expense, restore Harmon Park, including any improvements or other changes made to Harmon Park by mutual agreement of the parties, to as near the condition that existed immediately prior to such damage or destruction as reasonably possible.

**ARTICLE 11**  
**GENERAL PROVISIONS**

- A. **Title to the Properties.** Title to City Property shall remain with the City and no uses contemplated by this Agreement shall limit, burden or restrict use of City Property for parkland purposes. Similarly, title to the School District Property shall remain with the School District and no uses contemplated by this Agreement shall limit, burden or restrict use of the School District Property for its purposes.
- B. **Notices.** All notices, or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, with proper address as indicated below, or delivered personally, or given by facsimile transmission or other electronic means. The City and the School District may, by written notice given to the other, designate any address or addresses to which notices or other communications to them shall be sent when required as contemplated by this Agreement. Until otherwise provided by the respective parties, all notices and communications to each of them shall be addressed as follows:

**TO THE CITY:**

City of West St. Paul  
Attention: Park & Recreation Director  
1616 Humboldt Avenue  
West St. Paul, MN 55118

**TO THE SCHOOL:**

School District No. 197  
Attention: Director of Operations  
1897 Delaware Avenue  
Mendota Heights, MN 55118

- C. **Authority.** Each individual executing this Agreement on behalf of an entity represents and warrants that they are duly authorized to execute and deliver this Agreement on behalf of said entity and that this Agreement is a valid and binding obligation of said entity in accordance with the terms hereof.
- D. **Entire Agreement.** This Agreement contains the entire understanding of the parties hereto with respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties with respect to such subject matter. No representations, warranties, undertakings, or promises, whether oral, implied, written, or otherwise, have been made by either party hereto to the other unless expressly stated in this Agreement or unless mutually agreed to in writing between the parties hereto after the date hereof, and neither party has relied on any verbal representations, agreements, or understandings not expressly set forth herein.

- E. **Hazardous Substances.** The parties agree that hazardous substances, pollutants or contaminants shall not be used for the operation, management, or maintenance of Harmon Park facilities or improvements at Harmon Park, except in a manner as may be authorized by law. Neither party shall not be responsible for any costs, expenses, damages, demands, obligations, including penalties and reasonable attorneys' fees, or losses resulting from any claims, actions, suits, or proceedings based upon a release of any hazardous substances, pollutants, or contaminants, caused by the other party.
- F. **Captions, Headings, or Titles.** All captions, headings, or titles in the paragraphs or articles of this Agreement are inserted for convenience of reference only and shall not constitute a part of this Agreement as a limitation of the scope of the particular paragraphs or articles to which they apply.
- G. **Applicable Law; Severability.** The validity, performance, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Minnesota. If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstance shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- H. **Assignment.** Neither party shall assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.
- I. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original Agreement, but all of which shall be considered one instrument and shall become a binding Agreement when one or more counterparts have been signed by each of the parties and delivered to the other.
- J. **Amendment.** This Agreement may be amended by the mutual agreement of the parties. Any amendment of the provisions of this Agreement shall be valid only after it has been reduced to writing and duly signed by the parties.

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