

## LICENSE AGREEMENT

### (For Use of Horace Mann Elementary School Parking Lot)

This License Agreement (this “Agreement”) is entered into this 7<sup>th</sup> day of March, 2023, by and between the School District of West Allis West Milwaukee, et al., a unified school district organized and existing under Chapter 120, Subchapter II, of the Wisconsin Statutes (the “District”), and City of West Allis, a municipal corporation (the “City”). The District and the City are each also referred to as a “Party” and, together, the “Parties.”

### RECITALS

A. The District owns a parcel of real estate located at the 1500 Block of South 63rd Street, West Allis, Wisconsin, which is more particularly described on Exhibit A attached hereto and depicted on Exhibit B attached hereto, which the District uses as a parking lot (the “Parking Lot”) for Horace Mann Elementary School (the “School”).

B. The City operates the West Allis Farmers Market (the “Farmers Market”), which generally operates and is open to the public commencing the first Saturday in May each year and ending on the Saturday following Thanksgiving Day each year, the specific days of operation (the “Market Days”) and hours of operation being set forth on Exhibit C attached hereto and incorporated herein by reference.

C. The City desires to use the Parking Lot on a non-exclusive basis for the City’s use while the Farmers Market is in operation and open to the public, and the District is amenable to the City’s use of the parking lot while the Farmers Market is operational and open to the public, under the terms and conditions provided herein.

### AGREEMENT

NOW THEREFORE, in consideration of the promises and covenants contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE I USE OF FACILITIES

1.1. Grant of Use. The District hereby grants the City a non-exclusive license to use the Parking Lot. The City acknowledges that it accepts the Parking Lot in its “as is” condition. This license does not create or grant the general public any rights. Use of the Parking Lot under this license is limited to City personnel operating the Farmers Market, Farmers Market vendors and Farmers Market patrons, who may use the Parking Lot for vehicular parking and ancillary ingress and egress, and for no other purpose. The City shall post signage approved by the District notifying the public of such restricted use.

1.2. Schedule of Use. The City may, subject to Section 1.5 below, use the Parking Lot during regularly scheduled hours of Farmers Market operation as set forth on Exhibit C, and during

the one hour before and the one hour following such regularly scheduled hours of operation (the “Market Hours”), each Market Day. The City may use the Parking Lot on days other than regularly scheduled Market Days and/or Market Hours that the Farmers Market is in operation and open to the public with the District’s prior written consent, which consent shall not be unreasonably delayed, conditioned, or denied.

1.3. Non-Exclusive Use. The City’s use of the Parking Lot during the Market Hours on the Market Days is not exclusive, unless the Parties otherwise agree in writing.

1.4. Use of Available Parking Spaces. The City and its invitees shall have the right to park in the available parking spaces that are not restricted by law and that are not dedicated to District staff. [City may designate particular areas of the Parking Lot for bus and/or truck parking.]

1.5. Entry. The Parking Lot is fenced and has a locked gate. The District will be responsible for locking and unlocking the gate so that the Parking Lot is available for the City’s use during the Market Hours on the Market Days. The District shall not be responsible for motor vehicles or personal property that are “locked in” once the gate is closed and locked following Market Hours.

1.6. Prohibited Use During School Hours. Notwithstanding anything contained in this Article I or elsewhere in this Agreement to the contrary, the City may not use the Parking Lot when classes at the School are in session without the prior written consent of the District, which consent the District can withhold in its discretion.

## **ARTICLE II TERMS AND CONDITIONS OF USE**

2.1. Fee for Use. There shall be no fee or rent due from the City for its use of the Parking Lot under this license.

2.2. Maintenance. The District shall be responsible for general maintenance of the Parking Lot. Each Party shall use good faith efforts to keep the Parking Lot reasonably clean and presentable. The City agrees that it will do basic cleanup of trash and debris shortly before the end of the Market Hours each Market Day.

2.3. Operating Costs. Except as set forth in Section 2.2, the District shall continue to be responsible for the Operating Costs associated with the Parking Lot. The term “Operating Costs” shall mean all expenses, costs and disbursements of any kind and nature incurred by the District in connection with the ownership, operation, maintenance, and repair of the Parking Lot that the District pays or becomes obligated to pay during a year, regardless of when the same were incurred. Operating Costs shall include, without limitation, insurance costs of every kind and nature, and costs of electrical service. Notwithstanding anything contained in this Section 2.3 or in Article IV below to the contrary, the City shall reimburse the District for any cost or expense incurred by the District to repair or replace damage to the Parking Lot, the Parking Lot fencing and gate, and the security system (if applicable), caused by the City or by Farmers Market vendors and/or patrons using the Parking Lot.

2.4. Oversight of Use. If requested by the District the City shall during Market Hours on Market Days have a City employee or agent present at the Parking Lot in a supervisory capacity, who shall be responsible for oversight of the use of the Parking Lot. The City's employees and agents who are providing oversight of the Parking Lot shall enforce the District's rules and regulations pertaining to safety and use of the Parking Lot and the District's surrounding property. The City shall not be responsible for supervision of the District's staff, students, or invitees while they are utilizing the Parking Lot during Market Hours on Market Days.

2.5. Compliance with Laws. The City shall use the Parking Lot in a careful, safe and proper manner, and shall not use or permit the Parking Lot to be used for any purposes prohibited by applicable federal, state, county, municipal or other governmental laws, codes, rules and regulations. The City shall not commit waste, or suffer or permit waste to be committed, or permit any nuisances on or in the Parking Lot. The cost of complying with such local, state, or federal laws, regulations and codes regarding the Parking Lot shall be borne by the District unless compliance with such governmental laws, codes, rules, and regulations is required solely due to the City's use of or activities on the Parking Lot, in which event the City will be responsible for such costs.

2.6. Rules and Regulations. The District may establish rules and regulations pertaining to the City's use of and activities on the Parking Lot which the City's shall enforce. The District will provide the City with a copy of such rules and regulations, including all updates of the same, or, alternatively, shall have the rules and regulations prominently displayed at the Parking Lot.

### **ARTICLE III INSURANCE**

3.1. Insurance by City. Prior to the seasonal opening of the Farmers Market each calendar year the City will provide the District with a copy of insurance policies, including all endorsements to the same, each written by responsible, financially sound insurance companies authorized to do business in the State of Wisconsin, demonstrating: (a) general liability insurance in the minimum amounts of \$1,000,000 per occurrence and \$2,000,000 aggregate, which shall (i) list the District and its elected and appointed officials, agents, representatives and employees (collectively, the "Additional Insureds"), as additional insureds as their interests may appear, (ii) identify the insurance policies as "primary insurance," (iii) contain a waiver of subrogation provision, and (iv) require a thirty (30) day notice of cancellation or amendment to the District prior to its being cancelled or amended; (b) casualty insurance in the full amount of the replacement value of the fencing, gate, security system (if applicable), and other improvements in and on the Parking Lot; and (c) worker compensation insurance as required by law.

3.2. Right to Self-Insure. Notwithstanding anything in Section 3.1 to the contrary, the City may self-insure all or a part of the risks and liabilities to be insured under Section 3.1. This right to self-insure (the "Self-Insurance Right") is subject to the following terms and conditions:

3.2.1. The City will itself provide coverage and protection in accordance with the limits, extent, and types of coverage that would have been provided had the City purchased the insurance described in Section 3.1 from an independent insurer in accordance with Section 3.1. This obligation to provide coverage includes the obligation to provide to the District all of the

protections, benefits, rights, indemnities and payments that would have been provided had the City not exercised the Self-Insurance Right but had purchased the insurance policies provided for in Section 3.1 from an independent insurer.

3.2.2. In addition to, and without derogating from, or in any way limiting or restricting any other release or indemnity contained in this Agreement, the City releases the District from any and all losses, costs and damages, and agrees to indemnify and hold harmless the District from and against every demand, claim, cause of action, judgment and expense and all loss and damage however caused arising from or pertaining to all or any of the events, risks, and perils which would have been covered under the insurance provided for in Section 3.1 if the City had purchased insurance policies and not exercised the Self-Insurance Right.

3.2.3. Nothing herein limits or diminishes the waiver of subrogation rights and obligations as provided for in this Lease or the rights that the District's insurance carriers would have had under "other insurance" or similar clauses in the District's insurance policies had the City not exercised the Self-Insurance Right.

3.3. Waiver of Subrogation. Each Party releases and discharges the other Party from all claims and liabilities arising from or caused by any hazard covered by insurance on the Parking Lot or covered by insurance in connection with the Parking Lot or activities conducted at the Parking Lot, regardless of the cause of the damage or loss.

#### **ARTICLE IV DAMAGE TO PARKING LOT**

In case of damage to the Parking Lot due to vandalism, malicious mischief or any other casualty, the District shall diligently proceed to make all the repairs necessary to restore the Parking Lot, including its fencing, gate, and security system (if any), to substantially the condition in which it existed immediately before such damage, subject to delays that may arise by reason of adjustment of loss under insurance policies and delays beyond the reasonable control of the District, unless one or both of the Parties decides to terminate this Agreement.

#### **ARTICLE V ASSIGNMENT**

The City may not assign this Agreement without the prior written consent of the District, which the District may withhold in its sole discretion.

#### **ARTICLE VI DEFAULT AND REMEDIES**

6.1. Events of Default. It shall be an Event of Default if:

6.1.1. Certain Defaults. Except as set forth in Section 6.1.2, the City fails to fulfill any of its obligations under this Agreement, and such failure continues for a period of fifteen (15) days after notice thereof, unless such failure cannot reasonably be cured within such fifteen (15) days, and the City promptly commences the cure and diligently pursues the cure thereafter, in which case, the City shall have a reasonable period of time to cure such failure.

6.1.2. Special Circumstances Defaults. Section 6.1.1 notwithstanding, if the City fails to fulfill its obligations under this Agreement, and such failure entails either: (a) the lapse or failure to maintain any required insurance coverage; or (b) any condition that threatens imminent harm of personal injury, death or substantial property damage, then, the City shall cure such failure as soon as possible and in no event more than 72 hours after the earlier of the City's becoming aware of such failure or the District gives notice thereof, and, in the meantime shall immediately take remedial action to mitigate the possibility of damages occurring because of such condition.

6.2. Remedies. In case of an Event of Default, the District may do any of the following:

6.2.1. Termination. Terminate this Agreement upon ten days' notice to the City.

6.2.2. Suspension. Suspend the City's license under this Agreement for as long as the Event of Default continues.

6.2.3. Performance. Perform in the stead of the City and collect from the City the reasonable expenses associated with such performance.

6.2.4. Other Rights. Pursue any other rights available to the District under law or in equity.

6.3. Remedies Cumulative. The remedies provided in Section 6.2 are not exclusive and, except in the case of Sections 6.2.1 and 6.2.2, no exercise of one remedy shall preclude pursuit of any other remedy.

6.4. Non-Waiver. Waiver by either Party of any breach of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of such term, covenant, or condition of this Agreement.

6.5. Limitation of Damages. Under no circumstances shall either Party be liable to the other for any indirect, incidental, consequential, exemplary or punitive damages. Nothing contained within this Agreement is intended to be a waiver or estoppel of either of the Parties or their respective insurers to rely upon the limitations, defenses, and immunities contained within Wisconsin Statutes Sections 345.05 and 893.30. Neither Party shall be liable to the other Party or their insurers in indemnity, contribution or otherwise for an amount greater than the limits of liability for municipal claims established by law.

6.6. Force Majeure. Unless otherwise specifically provided above, neither Party shall be required to perform any term, condition, or covenant in the Agreement if such performance is delayed or prevented by acts of God, labor disputes (whether or not lawful), material or labor shortages, restrictions by any governmental authority, civil riots, floods, and any other cause not reasonably within the control of the Party, and that, by the exercise of due diligence, the Party is unable, wholly or in part, to prevent or overcome.

**ARTICLE VII  
INDEMNIFICATION**

7.1. General Obligations of Indemnity. Subject to the limitations set forth in Section 6.5 above, to the extent permitted by applicable law, the City shall indemnify, protect, hold harmless, save and keep harmless the District from any and all liability, obligation, loss, claim, and damage whatsoever, regardless of cause thereof, and all expenses in connection therewith, including, without limitation, counsel fees and expenses (collectively, “losses”) arising out of or resulting from the City’s use and occupancy of the Parking Lot, including, but not limited to, any accident, incident or occurrence arising or resulting from, or in connection with the operation, use, condition, or possession of the Parking Lot resulting in damage to property or injury or death to any person. The indemnification arising under this section shall continue in full force and effect notwithstanding the termination of this Agreement for any reason.

**ARTICLE VIII  
TERM**

8.1. Initial Term and Renewal Terms. The initial term of this Agreement shall commence on the first Saturday in May, 2023 (the “Commencement Date”), and, unless it is sooner terminated because of an Event of Default, shall terminate the Saturday following Thanksgiving Day, in 2023, provided, however, this Agreement shall automatically renew for additional one (1) year terms (each renewal term commencing the first Saturday in May each year and terminating the Saturday following Thanksgiving Day each year), upon the same terms as set forth herein. No later than thirty (30) days before the expiration of the initial term or any renewal term, a party desiring to terminate this Agreement at the expiration of the then existing term shall notify the other party in writing of its intention to terminate this Agreement. Notwithstanding anything in this Section VIII to the contrary either party may terminate this Agreement upon thirty (30) days prior written notice.

**ARTICLE IX  
MISCELLANEOUS PROVISIONS**

9.1. Expenses. Except as provided herein, each Party shall bear its own costs in connection with this transaction, including legal and accounting fees.

9.2. Severability. If any provision of this Agreement is held for any reason to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall, nevertheless, remain in full force and effect.

9.3. Notices. Any notices or other communications required or permitted under this Agreement shall be sufficiently given if sent by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the City:

City of West Allis  
Attn: Shaun Mueller, Community & Economic  
Development Coordinator  
7527 W Greenfield Avenue  
West Allis, WI 53214

If to the District:

School District of West Allis-West Milwaukee, et al.  
Attn: Steven J. Eichman, Facilities Manager  
1205 S 70th Street, Suite 513  
West Allis, WI 53214

9.4. Use of Facsimile and Email. Except as provided in Section 9.3 above, facsimile and email may be used to transmit signed documents. Signatures transmitted by facsimile or email shall be as binding as originals for all purposes.

9.5. Captions. The captions in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

9.6. Survival. Each and every provision of this Agreement shall survive the execution hereof and shall survive the closing of the transaction contemplated by this Agreement and shall remain binding on the Parties until all performance called for hereunder is complete.

9.7. Binding Effect. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided, however, that nothing herein shall be construed to allow any assignment of this Agreement contrary to the provisions of Article V.

9.8. Entire Agreement and Modification. This Agreement supersedes all prior agreements between the Parties with respect to subject matter hereof and constitutes a complete and exclusive statement of the understanding between the Parties with respect to the subject matter of this Agreement. This Agreement may not be amended except by a written agreement executed by both of the Parties.

9.9. Construction. This Agreement shall not be subject to the rule of contract construction against the drafter of the document, this Agreement being the result of the joint drafting by the Parties.

9.10. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have caused this Parking Lot Use Agreement to be executed effective as of the date first written above.

**SCHOOL DISTRICT OF WEST ALLIS–  
WEST MILWAUKEE, ET AL.**

By: \_\_\_\_\_  
Dr. Martin G. Lexmond, Superintendent

**CITY OF WEST ALLIS**

By: \_\_\_\_\_  
Dan Devine, Mayor

\_\_\_\_\_  
Rebecca Grill, City Clerk



## **EXHIBIT A**

### **DESCRIPTION OF PARKING LOT**

The South 17.5' of Lot 18 and all of Lots 19 through 22 in Block 5 in Liberty Heights, being a subdivision of a part of the Northeast 1/4 of Section 3, Township 6 North, Range 21 East, in the City of West Allis, County of Milwaukee, State of Wisconsin.

Tax Key 454-0107-001

**EXHIBIT B**  
**DIAGRAM OF PARKING LOT**



## **EXHIBIT C**

### **MARKET DAYS AND HOURS OF OPERATION**

Sunday	Closed
Monday	Closed
Tuesday	Noon - 6 pm
Wednesday	Closed
Thursday	Noon - 6 pm
Friday	Closed
Saturday	1 pm - 6 pm