

A RESOLUTION RATIFYING A FACILITIES USE AGREEMENT WITH AVON LAKE SCHOOL DISTRICT FOR THE 2024 TOTAL SOLAR ECLIPSE WATCH PARTY, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Avon Lake desires to use the Avon Lake High School football stadium with its locker rooms, the press box, the caboose, located near the entrance of the stadium, the auxiliary gym, and the parking lots on the high school campus for the Total Solar Eclipse Watch Party; and

WHEREAS, the Avon Lake School District will allow the City of Avon Lake to rent and use the football stadium and its facilities for a City-sponsored event on April 8, 2024.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF
THE CITY OF AVON LAKE, STATE OF OHIO:

Section No. 1: That Council hereby confirms, adopts, and ratifies the School Facilities Use Agreement with Avon Lake City School District. (Exhibit A)

Section No. 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees which resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section No. 3: This Resolution is hereby declared to be an emergency measure, the emergency being the necessity of securing the high school stadium and its facilities for the total eclipse watch party, in preparation of the anticipated surge of people coming into Avon Lake for this once-in-a-lifetime event, thus for the preservation of the public peace, health, safety, and welfare. Therefore, this Resolution shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: 12/18/2023

/s/ Martin E. O'Donnell

President of Council

POSTED: 12/22/2023

APPROVED: 12/19/2023

ATTEST: /s/ Valerie E. Rosmarin
Clerk of Council

/s/ Gregory J. Zilka
Mayor

SCHOOL FACILITIES USE AGREEMENT

2024 TOTAL SOLAR ECLIPSE WATCH PARTY

This School Facilities Use Agreement (this “Agreement”) is entered into effective as of the last date of execution below by and between the City of Avon Lake, Ohio (the “City”) and the Board of Education of the Avon Lake City School District (the “School District”). (The City and the School District are hereinafter sometimes referred to individually as a “Party” and together as the “Parties.”)

WHEREAS, the School District owns and maintains a football stadium with locker rooms and a press box, a caboose located near the entrance of the football stadium, and an auxiliary gym and parking lots located on the School District’s high school campus (the “Facilities”); and

WHEREAS, subject to the terms hereof, the City desires to rent and use, and the School District desires to allow the City to rent and use, the Facilities for a City-sponsored event to observe the total solar eclipse to occur in April 2024 as described herein;

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

1. **Term; Termination.** The term of this Agreement shall commence on April 7, 2024, and continue in effect until April 8, 2024 (during the times set forth below), unless earlier terminated as provided herein (the “Term”).
 - a. **April 7, 2024:** The City shall be permitted access to and use of the Facilities beginning at 8:00 a.m. until 5:00 p.m. (or such other times as may be mutually agreed upon in writing).
 - b. **April 8, 2024:** The City shall be permitted access to and use of the Facilities beginning at 8:00 a.m. until 7:00 p.m. (or such other times as may be mutually agreed upon in writing).

At the expiration or termination of the Term, the City shall immediately cause the Facilities to be peaceably vacated by its employees, representatives, and agents and by the attendees of the Watch Party (defined below). The City hereby acknowledges that it is of the utmost importance that the Watch Party is concluded and any clean-up and equipment removal in connection therewith be timely completed in accordance with the terms and conditions herein so as not to interfere with the School District’s school operations. The City hereby represents and warrants that it shall restore the Facilities to their original state of maintenance and repair immediately upon the conclusion of the Watch Party and in no event shall such restoration interfere with the School District’s school operations.

If the City is in breach of this Agreement and such breach is not promptly cured to the satisfaction of the School District, the School District, in its sole discretion, may immediately terminate this Agreement.

2. **Access to and Use of the Facilities; Compliance with Laws.** Upon execution of this Agreement, the City agrees to pay to the School District a rental fee in the amount of Sixteen Thousand Dollars (\$16,000), which is calculated based on a charge in the amount of Twenty Dollars (\$20) per each of the eight hundred (800) parking spaces that shall be available at the Facilities for attendees of the Watch Party (the "Fee"). The Fee is due and payable to the School District not later than fourteen (14) days prior to the commencement of the Term. In the event that the City cancels the Watch Party and provides written notice of such cancellation to the School District not later than fourteen (14) days prior to the commencement of the Term, the City may terminate this Agreement without payment of the Fee or any penalty to the School District. The City hereby represents and warrants that its use of the Facilities is for the sole and exclusive purpose of hosting for the general public a total solar eclipse watch party in accordance with the terms and condition herein (the "Watch Party"). The City shall comply with, and shall require the attendees of the Watch Party to comply with, all applicable federal, state and other laws while at the Facilities. At no time shall the City allow occupancy of the Facilities (or any part thereof) to exceed the maximum permitted occupancy. The City shall comply with all applicable School District policies, rules, and regulations, including without limitation all terms and conditions set forth in the Application-Permit for the Use of School Facilities and all provisions of Board Policy KG-R (Community Use of School Facilities), copies of which are attached hereto and made a part hereof as if set forth in full herein. Notwithstanding anything in this Agreement to the contrary, if and to the extent there are any inconsistencies, conflicts, or ambiguities between or among this Agreement and the Application-Permit for the Use of School Facilities and/or Board Policy KG-R (Community Use of School Facilities), the City hereby agrees that it shall comply with the more stringent requirements, including without limitation any insurance and/or indemnification requirements, in accordance with the School District's reasonable interpretation. The City acknowledges and agrees that the School District shall not be obligated to provide any of its staff or students to assist with the Watch Party, except that the School District shall make available a staff member to unlock any doors as necessary for the City to gain access to and use the Facilities in accordance with this Agreement.
3. **Costs and Reimbursement.** The City shall be solely responsible for all costs and expenses associated with the Watch Party including without limitation all liabilities, food and libations, transportation, communication, entertainment, whether provided by the City or third parties. The City shall pay for the repair of any and all damage to the Facilities or equipment located at the Facilities caused by the City or the attendees of the Watch Party or resulting from the City's use of the Facilities.
4. **Personal Property and Accommodation** The City hereby agrees that the School District shall have no responsibility or liability for any loss or damage to the City's, or its vendors', personal property. The City hereby holds harmless and releases and discharges the School District from all responsibility or liability for any loss or damage to the City's, or its vendors', personal property. With the School District's prior written consent, which consent may be granted or withheld in the School District's sole discretion, the City may provide additional accommodations at the Facilities, including without limitation portable restrooms, trash receptacles, and dumpsters. No such additional accommodations shall be

placed or installed in the parking lots. In the event that such consent is granted by the School District, the City shall make such installation at its own cost and expense and strictly in compliance with any specifications, requirements or limitations imposed by the School District. At the conclusion of the Watch Party, or earlier termination of this Agreement, the City shall remove any such accommodations made by the City at the Facilities, at the City's sole expense. The City shall use every reasonable precaution to protect the Facilities against damage. The City shall be liable for any damage to the Facilities resulting from the City's breach of its obligations hereunder. Subject to reasonable wear and tear, the City is expected to restore the Facilities to their original state of maintenance and repair immediately upon the conclusion of the Watch Party. The City may provide for concessions services at the Facilities for the Watch Party at its sole cost and expense subject to the approval of the School District. The School District reserves the right to determine that the sale of concessions is not appropriate and restrict such sale or to limit the sale and consumption of such concessions in its sole discretion.

5. **Insurance.** At all times during the Term, the City shall maintain a liability insurance policy that will cover all risks of the City's use of the Facilities, including without limitation all risks to the School District and any attendees of the Watch Party, in an amount of not less than Ten Million Dollars (\$10,000,000.00). The City shall add the School District to the City's policy as a loss payee and an additional insured, at the City's sole expense. The City shall require each and every vendor at the Watch Party to maintain a liability insurance policy with coverage limits as appropriate for the services being provided by the vendor at the Watch Party and shall require the vendor to add the School District to the vendor's policy as a loss payee and an additional insured, at the vendor's sole expense. Not later than fourteen (14) days prior to commencement of the Term, the City shall furnish to the School District certificates of insurance evidencing the insurance coverages required hereunder for the City and each and every vendor. The limits of insurance required by this Agreement or carried by the City shall not limit the liability of the City nor relieve it of any obligation hereunder, including without limitation its obligation to indemnify the School District.
6. **Indemnification.** The City agrees to indemnify and hold harmless the School District, its board members, officers, employees and agents from and against any and all losses, obligations, liabilities, damages, actions, suits, causes of action, claims, demands, settlements, or judgments (including reasonable attorney fees) that are asserted against, imposed upon or incurred or suffered by the School District as a result of, arising out of, or related to any act or omission by the City under this Agreement. This Section shall survive the expiration or termination of this Agreement.
7. **Assumption of Risk.** The City acknowledges, having inspected the Facilities, that it is familiar with the condition thereof, and accepts access to the Facilities under existing conditions. It is understood and acknowledged that the School District makes no warranty, either express or implied, as to the condition of the Facilities.
8. **Clean-Up.** At the conclusion of the Watch Party, the City shall inspect the Facilities for, and clean up and remove, all trash, debris and other items related to the Watch Party. In the

event that any snow shall need to be removed from the parking lots or any other part of the Facilities in connection with the Watch Party, the City shall be solely responsible for removing the snow and all costs associated therewith.

9. **Waiver.** Failure of a Party to insist upon strict compliance with any of the terms, covenants or conditions hereof shall not be construed as a waiver of such terms, covenants, or conditions.
10. **Modification.** No amendment or modification of this Agreement shall be valid or binding upon the Parties unless it is made in writing and signed by both Parties.
11. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
12. **Binding Effect; Assignment.** This Agreement shall inure to the benefit of and be binding on the Parties and their respective legal representatives, successors, and permitted assigns. Neither Party may assign this Agreement without the prior written consent of the other Party.
13. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.
14. **Entire Agreement.** This Agreement contains the entire understanding and agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, and representations (written or oral) with respect thereto.
15. **Governing Law.** This Agreement shall be construed under and in accordance with the laws of the State of Ohio without regard to any such laws relating to choice or conflicts of laws.
16. **Notices.** All written notices given to or made by either Party to the other in connection with this Agreement shall be mailed by first class U.S. mail, postage prepaid, or sent by a reputable courier service to the other Party at the address identified for that Party herein below.
17. **No Third-Party Beneficiary.** None of the provisions in this Agreement are for the benefit of or are enforceable by any third party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date of execution below.

CITY OF AVON LAKE, OHIO

**BOARD OF EDUCATION OF THE
AVON LAKE CITY SCHOOL
DISTRICT**

By: _____

By: _____

Its: _____

Its: Superintendent

Date: _____

Date: _____

NOTICE ADDRESS:

150 Avon Belden Road

Avon Lake, OH 44012

ATTN: _____

NOTICE ADDRESS:

175 Avon Belden Road

Avon Lake, OH 44012

ATTN: Superintendent