City of Carroll

627 N. Adams Street Carroll, Iowa 51401 (712) 792-1000 FAX: (712) 792-0139

MEMO TO: Mike Pogge-Weaver, City Manager MSP-W

FROM: Jack Wardell, Director of Parks and Recreation PW

DATE: June 24, 2021

SUBJECT: Revised Lease Agreement – Merchants Park – Iowa High School Athletic Association – State Baseball Tournament – 2021

- Revised Lease Agreement – Merchants Park Stadium

At the request of the Iowa High School Athletic Association some minor changes have been made to the agreement. The changes are as follows:

Paragraph 2 **RENT:** Last sentence – inserted *"Baseball"* between the words "State" and "Tournament."

Paragraph 5 **CARE AND MAINTENANCE:** Added the following which is in all of the IHSAA host agreements:

> *"The City represents and warrants that the facilities provided are in compliance with all applicable building, safety, fire, and all other laws, stat-utes, codes, ordinances, rules, and regulations of federal, state, and local governmental agencies, including, without limitation, the Americans with Disabilities Act, as amended (collectively, "Applicable Laws"). The City hereby further warrants and represents that the improvements and fixtures on the premises meet current industry standards, have been inspected and maintained as required by any applicable building codes or applicable laws, are in good repair and in a safe and working condition as required by the Association, its guests, invitees, and patrons for its intended use, and will be maintained in safe and working condition during the term of the rental."*

Paragraph 8 **ADMISSIONS AND IHSAA STAFF:** Inserted after first sentence: *"The City shall enforce and adhere to IHSAA admission guidelines, including but not limited to IHSAA pet policy."*

Paragraph 13 **INSURANCE:** Inserted *ISHAA carries $3,000,000 liability insurance as aggregate.*

Paragraph 16 **DAMAGES:** Inserted after last sentence: *"In the event that the damage to the premises is not due to the actions of the IHSAA, its employees, invitees, or patrons, the IHSAA shall receive a refund of any rental payment is made to the City."*

Paragraph 18 **DEFAULT, NOTICE OF DEFAULT AND REMEDIES:**

EVENTS OF DEFAULT: in item 2): Inserted *"City or the"* between the words *"the"* and *"IHSAA."*

REMEDIES:

- In first line of first sentence: *"City or the"* was inserted between the words *"the"* and *"IHSAA."*
- In second line of first sentence "*IHSAA or"* was inserted between *"the"* and *"City."*
- In item 1) Termination:
    - In first line, changed *"The City"* to *"Either party."*
    - In second line, changed *"IHSAA"* to *"other party."*
    - In third line, inserted, *"by default of the IHSAA"* between *"lease"* and *", the city."*

The City Attorney has reviewed the revisions and has inserted these changes in the attached lease agreement for City Council consideration.

RECOMMENDATION: To have the Mayor and City Council consider and approve the resolution and to have the Mayor sign the revised lease agreement with Iowa High School Athletic Association.

RESOLUTION NO._____

A RESOLUTION APPROVING THE REVISED MERCHANTS PARK LEASE WITH IOWA HIGH SCHOOL ATHLETIC ASSOCIATION

WHEREAS, Chapter 17, of the Code of Ordinances of the City of Carroll, Iowa, provides that all contracts made by the city be reduced to writing and approved by the City Council by resolution; and

WHEREAS, the Revised Merchants Park Lease is attached hereto as Exhibit "A"; and

WHEREAS, it is determined that the approval of the attached Revised Lease is in the best interest of the City of Carroll, Iowa;

NOW, THEREFORE, BE IT RESOLVED that the Revised Merchants Park Lease, attached as Exhibit "A', be authorized and approved, and that the Mayor and City Clerk are authorized to execute the contract on behalf of the City of Carroll.

PASSED AND APPROVED by the City Council of the City of Carroll, Iowa, this _____ day of June, 2021.

CITY COUNCIL OF THE
CITY OF CARROLL, IOWA

BY: _____
Eric P. Jensen, Mayor

ATTEST:

By: _____
Laura A. Schaefer, City Clerk

MERCHANTS PARK LEASE

THIS AGREEMENT made and entered into this _____ day of June, 2021, by and between the City of Carroll, Iowa (City) and Iowa High School Athletic Association (IHSAA).

The parties agree as follows:

1. **PREMISES AND TERM**. The City leases to the IHSAA, Merchants Park in Carroll, Iowa, together with all improvements thereon, and all rights, easements and appurtenances thereto, upon the condition the IHSAA performs as provided herein, regarding the 2021 Iowa High School State Baseball Tournament scheduled to be played on July 27-30, 2021.

After the 2021 tournament is completed the IHSAA shall notify the City, if it has interest to lease the stadium for future year(s) and provide future dates of the tournament. The Parties may then negotiate a new Lease.

2. **RENT**. The IHSAA agrees to pay the City as rent: Five Thousand Six Hundred Dollars ($5,600.00) and other good and valuable consideration, payable in advance of July 26, 2021. In addition to the above rent, IHSAA agrees to pay the City $1,000 to be used for City personnel, supplies, or other uses related to the Iowa State Baseball Tournament.

3. **POSSESSION**. The IHSAA shall be entitled to possession on July 26, 2021, and shall yield possession to the City on August 1, 2021.

4. **USE.** The IHSAA shall use the premises only for the Iowa High School State Baseball Tournament, on the above dates.

5. **CARE AND MAINTENANCE.**

a) The IHSAA takes the premises As Is.
b) The City shall maintain the premises.
c) IHSAA shall not permit nor allow the premises to be damaged or depreciated in value by any act, omission to act or negligence of itself, its agents or employees.

The City represents and warrants that the facilities provided are in compliance with all applicable building, safety, fire, and all other laws, statutes, codes, ordinances, rules, and regulaions of federal, state and local governmental agencies, including, without limitations, the Americans with Disabilities Act, as amended, (collectively, "Applicable Laws"). The City hereby further warrants and represents that the improvements and

fixtures on the premises meet current industry standards, have been inspected and maintained as required by any applicable building codes or applicable laws, are in good repair and in a safe and working condition as required by the Association, its guests, invitees, and patrons for its intended use, and will be maintained in safe and working condition during the term of the rental.

6. **UTILITIES**. The City shall provide and pay for all utilities which may be used on the premises. The City shall not be liable for damages for failure to provide, or for any disruption of utilities arising from causes beyond the control of the City, provided the City uses reasonable diligence to resume such services.

7. **CONCESSIONS**. The City shall contract for all beverage and food concessions during games and will retain profits or make other arrangements for distribution of profits.

8. **ADMISSIONS AND IHSAA STAFF**. The City shall provide staff at the entrance for collection of admission. The City shall enforce and adhere to IHSAA admission guidelines, including but not limited to IHSAA pet policy. IHSAA staff shall be available throughout the stadium and during games for assistance to the public in case of need or emergency.

The IHSAA will make no unlawful use of the premises and agrees to comply with all Federal, State and local laws.

9. **PARKING**. The City shall be responsible for orderly parking adjacent to the stadium and the collection of a reasonable fee, if any. The parking fee shall be retained by the City, if determined a fee is to be charged.

10. **APPAREL**. IHSAA shall sell official State Baseball Tournament merchandise and retain all proceeds. Sales of Merchants Park merchandise is permitted; however, no reference to the State Baseball Tournament is allowed on Merchants Park apparel.

11. **SURRENDER**. Upon the termination of this lease, IHSAA shall surrender the premises to the City in good and clean condition, except for ordinary wear and tear or damage without fault or liability of IHSAA.

12. **ASSIGNMENT AND SUBLETTING.** No assignment or subletting, shall be effective without the prior written consent of the City.

13. **INSURANCE.**

a) PROPERTY INSURANCE. The City and IHSAA agree to insure their respective real and personal property for the full insurable value. Such insurance shall cover losses included in the Insurance Services Office Broad Form Causes of Loss.

b) LIABILITY INSURANCE, IHSAA shall obtain commercial general liability insurance in the amounts of $2,000,000 liability insurance for each occurrence and

$3,000,000 liability insurance as aggregate. This policy shall be endorsed to include the City as an additional insured and proof provided to City 30 days prior to lease beginning.

14. **LIABILITY FOR DAMAGE**. Each party shall be liable to the other for all damage to the property of the other negligently, recklessly or intentionally caused by that party (or their agents, employees or invitees).

15. **INDEMNITY**. Except for any negligence of the City, IHSAA will protect, defend, and indemnify the City from and against any and all loss, costs, damage and expenses occasioned by, or arising out of, any accident or other occurrence causing or inflicting injury or damage to any person or property, happening or done in, upon or about the premises or due directly or indirectly to the tenancy, use or occupancy there, or any part thereof by IHSAA or any person claiming through or under IHSAA.

16. **DAMAGES**. In the event of damage to the premises, so that IHSAA is unable to conduct the tournament on the premises, this lease may be terminated at the option of either party. Such termination shall be effected by notice of one party to the other and both parties shall thereafter be released from all future obligations hereunder. In the event that the damage to the premises is not due to the actions of the IHSAA, its employees, invitees, or patrons, the IHSAA shall receive a refund of any rental payment made to the City.

17. **MECHANICS' LIENS**. Neither IHSAA, nor anyone claiming by, through, or under IHSAA, shall have the right to file any mechanic's lien against the premises. IHSAA shall give notice in advance to all contractors and subcontractors who may furnish, or agree to furnish, any material, service or labor for any improvement on the premises.

The IHSAA shall not incur any expense on behalf of the City nor is the IHSAA authorized in any fashion to contract with third parties on behalf of the City.

18. **DEFAULT, NOTICE OF DEFAULT AND REMEDIES**.

EVENTS OF DEFAULT

Each of the following shall constitute an event of default by the IHSAA; 1) Failure to pay rent when due; 2) failure to observe or perform any duties, obligations, agreements, or conditions, imposed on the City or the IHSAA pursuant to the terms of the lease; 3) abandonment of the premises.

REMEDIES

In the event the City or the IHSAA has not remedied a default in a timely manner following a Notice of Default, the IHSAA or the City may proceed with all available remedies at law or in equity, including but not limited to the following: 1) Termination. Either party may declare this lease to be terminated and shall give the other party a written notice of such termination. In the event of termination of this lease by default of the

ISHAA, the City shall be entitled to prove claim for and obtain judgment against the IHSAA for the balance of the rent agreed to be paid for the term herein provided, plus all expenses of the City in regaining possession of the premises and the reletting thereof, including attorney's fees and court costs, crediting against such claim, however, any amount obtained by reason of such reletting; 2) Forfeiture. If a default is not remedied in a timely manner, the City may then declare this lease to be forfeited and shall give IHSAA a written notice of such forfeiture, and may, at the time, give IHSAA the notice to quit provided for in Chapter 648 of the Code of Iowa.

19. **ADVERTISING.** Advertising, such as signs, banners, tarps, flags, fence coverings or any other display of advertising is prohibited unless agreed upon by the parties. The City may decorate the exterior wrought iron fence with red, white and blue bunting or other non-advertising enhancements.

20. **NOTICES AND DEMANDS**. All notices shall be given to the parties hereto at the addresses designated unless either party notifies the other, in writing, of a different address. Without prejudice to any other method of notifying a party in writing or making a demand or other communication, such notice shall be considered given under the terms of this lease when it is deposited in the U.S. Mail, registered or certified, properly addressed, return receipt requested and postage prepaid.

21. **PROVISIONS BINDING**. Each and every covenant and agreement herein contained shall extend to and be binding upon the respective successors, heirs, administrators, executors and assigns of the parties hereto.

22. **CERTIFICATION**. The IHSAA certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitation this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. The IHSAA hereby agrees to defend, indemnify and hold harmless the City from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.

CITY OF CARROLL, IOWA	IOWA HIGH SCHOOL ATHLETIC ASSOCIATION
By:_____	By:_____
Eric P. Jensen, Mayor 627 N Adams Street Carroll, IA 51401	Tom Keating, Executive Director 1605 Story Street Boone, IA 50036
LANDLORD	TENANT

ATTEST:

By:_____
Laura Schaefer, Clerk

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