

ADMINISTRATIVE REPORT

DATE: March 23, 2023
TOPIC: 8.5 – Public Park Permanent Easement Agreement
PRESENTER: Dan Pyan, Executive Director of Finance and Operations
REFERENCE TO POLICY/STATUTE: Policy 701, 702

A. PURPOSE OF REPORT

- a. When Oltman Middle School was designed and built, school district land was set aside to be used by the City of Cottage Grove for athletic fields as outlined in the development agreement.
- b. The City of Cottage Grove is requesting a grant to help fund the cost of developing the property near Oltman Middle School.
- c. The grant requires a permanent easement be in place between the school district and the city to qualify for funding.
- d. The attached permanent easement agreement has been reviewed by district counsel.

B. RECOMMENDATION

- a. Administration recommends approval of the Public Park Permanent Easement agreement.



NON-EXCLUSIVE
PUBLIC PARK PERMANENT EASEMENT AGREEMENT

THIS PUBLIC PARK PERMANENT EASEMENT AGREEMENT (“Agreement”) is made, granted and conveyed this _____ day of _____, 2023, by and between Independent School District No. 833, a Minnesota public corporation (“Landowner”), and the City of Cottage Grove, a Minnesota municipal corporation (“City”).

PROPERTY DESCRIPTION

Landowner owns real property in Washington County, Minnesota legally described as follows:

Lot 2, Block 1, New Oltman Middle School

Abstract Property
PID: 06.027.21.32.0003

(the “Property”).

PERMANENT EASEMENT DESCRIPTION

The Landowner, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration to them in hand paid by the City, the receipt and sufficiency of which is hereby acknowledged, does hereby grant and convey unto the City, its successors and assigns the following:

A permanent, non-exclusive easement to allow the City and members of the public to use and enjoy the public park and its equipment for public outdoor recreational use and all such purposes ancillary, incident or related thereto (“Permanent Easement”) on, over and across the Property.

The Permanent Easement rights granted herein are forever and shall include, but not be limited to, the construction, maintenance, repair and replacement of any park equipment, and all facilities and improvements ancillary, thereto, (“Park Equipment”) located on, over and across the Property, in accord with City standards and policies for public parks.

The Permanent Easement rights further include, but are not limited to, the right of ingress and egress over the Property to access the Permanent Easement for the purposes of construction, maintenance, repair and replacement of Park Equipment.

EXEMPT FROM STATE DEED TAX

The rights of the City also include the rights of City, its contractors, agents and servants:

- (a) To enter upon the Property at all reasonable times for the purposes of construction,

reconstruction, inspection, repair, replacement and restoration relating to the purposes of the Permanent Easement; and

- (b) To maintain the Park Equipment; and
- (c) To remove from the Property trees, brush, herbage, aggregate, undergrowth and other obstructions interfering with the location, construction and maintenance of the Park Equipment; and
- (d) To remove or otherwise dispose of all earth or other material excavated from the Property as the City may deem appropriate, subject to the Landowner's written approval.

The rights granted hereunder are subject to the following conditions and limitation:

- (a) The City shall maintain all Park Equipment installed on the Property in good working order;
- (b) The City shall maintain in good condition all landscaping and physical improvements it makes to the Property;
- (c) The City shall defend, indemnify, and hold the Landowner harmless from any claim, loss, or injury resulting from the use of the Property for the Permanent Easement; and
- (d) The City shall maintain public liability insurance covering losses related to the Permanent Easement in at least the minimum limits of liability under Minn. Stat. Ch. 466.

The City shall not be responsible for any costs, expenses, damages, demands, obligations, penalties, attorneys' fees and losses resulting from any claims, actions, suits, or proceedings based upon a release or threat of release of any hazardous substances, petroleum, pollutants, and contaminants which may have existed on, or which relate to, the Property prior to the date hereof.

Nothing contained herein shall be deemed a waiver by the City of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by Landowner or its successors or assigns, shall be subject to any governmental immunity defenses of the City and the maximum liability limits provided by Minnesota Statutes, Chapter 466.

The Landowner, for itself and its successors and assigns, does hereby warrant to and covenant with the City, its successors and assigns, that it is well seized in fee of the Property described above and has good right to grant and convey the Permanent Easement herein to the City.

This Agreement is binding upon the heirs, successors, executors, administrators and assigns of the parties hereto.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

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