



CITY of NOVI CITY COUNCIL

Agenda Item 6
May 7, 2018

SUBJECT: Consideration of Agreement for Limited Use of Land for Recreational Facilities with Novi Community Schools for the improvement and use of land owned by the School District at Eleven Mile and Beck Roads, subject to final review and approval as to form by the City Manager and City Attorney's office.

SUBMITTING DEPARTMENT:

CITY MANAGER APPROVAL: PA

BACKGROUND INFORMATION:

The Novi School District owns an approximately 73.88-acre of property on the west side of Beck Road and the south side of Eleven Mile Road that is currently undeveloped and vacant. The City is in need of property in that general area of the City for parks and recreation purposes, specifically the development of outdoor sports and recreational opportunities to serve residents of the City and the School District.

Members of the administrations for both the City and School District began discussing a potential arrangement for the use of a portion of the School District property in 2017. The City was initially interested in acquiring ownership of some of the property, but eventually the discussion came to be focused on a long-term use agreement that would allow the City to use the property, including the right to make some physical improvements to it, but would also allow the School District to take back the property if it determined it needed to do so.

The attached Agreement will do the following:

- Allow the City to use and develop the property for multi-purpose sports, athletic, and recreational fields and related amenities, including parking areas and access roads or drives. The improvements would need to follow the general conceptual plan attached to the Agreement. No indoor recreation is permitted, and no permanent structures are allowed, except for any storage or maintenance structures agreed upon by the City and the School District.
- Require the City to maintain the land as public park land, open for use by the general public, and not for private operation.
- Allow the School District to use the property in a manner consistent with the use by the District of other City properties.
- Require the City to maintain appropriate insurance on the property.

The term of the Agreement is intended to be 25 years, but there are early termination provisions. The District can notify the City of its intention to use the property for the District's own purposes, which would trigger an obligation on the part of the City to cease all use and occupancy of the land within two years, at which point it would be required to vacate the property.

The City would have a right of first refusal in the event of *bona fide* written offer from an unrelated third party to purchase the land.

The attached Agreement contemplates required approvals by both the Novi City Council and the Novi Community School District.

RECOMMENDED ACTION: Approval of Agreement for Limited Use of Land for Recreational Facilities with Novi Community Schools for the improvement and use of land owned by the School District at Eleven Mile and Beck Roads, subject to final review and approval as to form by the City Manager and City Attorney's office.

PROPOSED PARK FACILITY LOCATION MAP

SOUTHWEST 11 MILE RD & BECK RD



Legend

- Driveway
 - Pathway
 - Softball/Cricket Field
 - Multi-Purpose Fields
 - Restroom
 - Parking Lot
 - Park Boundary
 - Stream or Drain
 - Wetlands
- ### Conservation Easement
- Wetlands Only
 - Woodlands Only
 - Wetlands and Woodlands
 - Unclassified

Council Draft 5.2.18

AGREEMENT FOR THE LIMITED USE OF LAND FOR RECREATIONAL FACILITIES (SCHOOL PROPERTY—ELEVEN MILE AND BECK ROADS)

THIS LICENSE AGREEMENT (the "License" or "Agreement") is made between the **CITY OF NOVI**, a municipal corporation in the State of Michigan, hereinafter referred to as "the City," and **NOVI COMMUNITY SCHOOLS**, a general powers school district and a public corporation operating under the provisions of the Revised School Code, MCL 380.1, *et seq.*, as amended, hereinafter referred to as "the District," for the use of real property for recreational and athletic purposes.

RECITALS

The District and the City, for the benefit of the citizens of the City of Novi and Novi Community Schools, have a long-standing policy of cooperation particularly in the areas of planning for and developing community recreation facilities that can be used to provide more cost effective and higher quality sports and recreational opportunities within the community.

The District is the owner of certain land located at the Southwest corner of Beck Road and Eleven Mile Road, as described on attached **Exhibit A** (the "Land"). The Land is currently vacant, and the District has no immediate plans for its improvement, use, or sale.

The City has proposed to develop a portion of the Land with multi-purpose fields for sports, athletics, and other recreational activities, together with appropriate amenities such as parking areas, storage buildings, and the like, in a manner that allows their subsequent removal and restoration, if required under this Agreement.

The City and the District have concluded that the Land is not currently being used by the District, and could be used for recreational purposes in a manner that will provide a benefit to the City by the incorporation of the proposed improvements to the Land by the City as part of its Parks, Recreation, and Cultural Services activities, as improved upon terms and conditions agreed upon by the parties in the future.

NOW, THEREFORE, in consideration of the mutual benefits hereinbefore described, and \$10.00, the receipt of which is hereby acknowledged, the District hereby agrees that the City may occupy, improve, maintain, and use the Land as provided below.

1. The term of this Agreement shall be approximately twenty-five (25) years commencing on _____, 2018 and ending on _____, 2043 (the "Initial Term") subject to the early termination provisions contained herein, provided that after

the expiration of such Initial Term of this License, or subsequent terms, the License may be extended by mutual consent of the parties for a subsequent term of not to exceed twenty-five (25) years. The parties mutually agree that at any time after December 31, 2020, the District may notify the City of the District's intention to use the Land for the District's own purposes, and in the event of such notice, the City shall cease all use and occupancy of the Land within two (2) years of the date of such notice, but shall be permitted to use and improve and maintain the Land as otherwise provided in this Agreement during such two-year period. At the conclusion of such two-year period or such lesser period should the City vacate the Land for 30 consecutive days during that two-year period, this License shall be deemed to be mutually terminated by the parties.

2. Prior to expiration or termination of this License as provided in Section 1 hereof, the City shall have a right of first refusal with respect to purchase of the Land. If prior to the expiration or termination of this License as provided in Section 1 hereof the District receives a *bona fide* written offer from an unrelated third party to purchase the Land that in the sole discretion of the Board of Education of the District is worthy of acceptance, the District shall give notice to the City of the terms of the proposed offer and of the District's intention to accept the offer. The City shall then have thirty (30) calendar days to notify the District in writing whether the City intends to exercise its right of first refusal to purchase the Land for the purchase price and purchase terms specified in the District's notice and to close on the purchase within the time specified in such notice. If the City fails to elect to make the purchase within thirty (30) calendar days, the District may then sell the Land to the first buyer, provided the sale is on the terms and conditions disclosed to the City. If the District does not close the transaction with the first buyer after the City's failure to elect to make the purchase, the right of first refusal shall be reinstated and be in place until its termination as provided below. If the City elects to purchase the Land, the City shall be bound by the price, purchase terms and time of closing set forth in the bona fide written offer. The District shall convey the District's then-existing title to the Land to the City in the event that the City exercises its right of first refusal and in the event of a closing with the City under this Agreement.

If the City refuses or fails to exercise the right to purchase the Land pursuant to this Paragraph, and the District sells the Land to a third party, and the district has not otherwise terminated this Agreement as provided in Paragraph 1 above, the City shall vacate the Land within two (2) years of such consummated sale. Upon vacation, the City shall have no obligation to remove any of the improvements integrated into the Land made hereunder, but may do so at its option with the consent of the District. In the event improvements are removed by the City, the City shall restore the Land to as good condition and repair as the same shall be at the commencement of this License, ordinary wear and tear excepted. The District shall have no ownership interest in such improvements unless and until the City vacates the Land.

3. The following provisions shall govern the development and use of the Land.
 - a. The District shall allow the City to develop the property for building multi-purpose sports, athletic, and recreational fields and related amenities, including parking areas and access roads or drives (the "Improvements"), generally in accordance with the Conceptual Plan dated _____, attached as **Exhibit B**.

- b. The City shall maintain and program the land and any facilities thereon as public parkland. The Improvements shall be for general public use and not for private operation.
- c. The City may deviate from the Conceptual Plan provided that uses, activities and structures shall at all times be limited to public multi-purpose fields and athletic and recreational uses and facilities having similar impact as fields. There shall be no permanent structures (i.e., structures that require a foundation) constructed on the Land by the City to be used for indoor recreation purposes; provided, however, that storage, and/or maintenance structures may be constructed and mutually agreed upon by the respective Administrators for the City and the District.
- d. All applicable City ordinances shall be met, including, without limitation, wetlands, woodlands, lighting and storm water ordinances, except as expressly provided otherwise in this Agreement.
- e. The District and the City may agree to allow the District use of the Land and Improvements in a manner consistent with use by the District of other City facilities.

4. The responsibility for the cost of design, permits, labor and materials required for development and the regular maintenance of the Land and facilities, including any lawn mowing or snow removal, shall be borne by the City. The Land shall be kept in a clean and sanitary condition. To the extent the Land is serviced by any utilities during the term of the License, the cost of such utilities shall be borne by the City.

5. The City agrees to notify the District of any discovered dangerous or defective conditions on the Land and agrees, to the extent a condition is identified to be the result of use by the City, to pay the cost of repair or maintenance.

6. The City shall maintain public liability and property damage insurance in commercially reasonable amounts consistent with the City's own policies for insurance coverage on an annual basis and shall also name the District as an additional insured under its policy with respect to the Land, evidence of which shall be provided on an annual basis if requested. The policy shall provide that the District shall be notified in writing at least 30 days prior to cancellation or reduction in coverage of such policy. In the event of cancellation or reduction of such coverage, the District may obtain, at a similar cost to other policies maintained by the District for such coverage, one or more policies that would provide coverage sufficient to replace the cancelled/reduced coverage and the City shall be responsible for reimbursing the District for such policy within 30 days from receipt of an invoice for such premium. Considering the liability issue, among other things, the City shall not be permitted to assign or sub-lease the right to use the Land. To the extent permitted by law, the City shall indemnify, defend and hold the District, its officers, employees, board members and agents harmless from any claims, losses, liabilities, awards, penalties, costs, damages, expenses and causes of action, including actual attorney fees and/or costs incurred by the District, arising out of the City's possession, use of or improvements to the Land. Notwithstanding the foregoing, the District acknowledges and agrees that the actions of the City under this Agreement are a governmental function. It is the intention of the Parties hereto that this Agreement shall not, in any manner, be construed

to waive the defense of governmental immunity, which the City possessed prior to the execution of this Agreement

8. This Agreement is not assignable by the City to any other individual or entity. The City shall not sublet or otherwise agree to allow, without the District's approval, the organized use of the improvements on the Land by other individuals or entities except as part of the City's Parks, Recreation, and Cultural Services activities.

9. This Agreement shall be in the nature of an irrevocable license, subject to the termination provisions herein.

10. If default shall at any time be made by the City in any of the other covenants or conditions imposed upon the City as described herein, and such default shall continue for thirty (30) days without correction after written notice thereof to the City by the District, then this License shall terminate and the District may pursue any and all legal remedies against the City. In the event of default, the City shall pay the District's costs and fees, including actual attorney fees, incurred as a result of the City's default. If the District breaches the terms of this Agreement, and such breach continues for thirty (30) days without correction after written notice thereof to the District by the City, then the City may pursue any and all legal remedies against the District, and the District shall pay the City's costs and fees, including actual attorney fees, incurred as a result of the District's breach.

11. If any legally, constituted authority condemns the Land or such part thereof which shall make the Land unsuitable for the purposes described herein, this License shall cease when the public authority takes possession. Such termination shall be without prejudice to the rights of either party to recover compensation from the condemning authority for any loss or damage caused by the condemnation. Neither party shall have any rights in or to any award made to the other by the condemning authority.

12. Any notice required or permitted under this License shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

If to the District:

Novi Community School District

Attn: Superintendent of Schools

25345 Taft Road

Novi, Michigan 48374

If to City:

City of Novi

Attn: __Mayor_____

The District and the City shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

13. No waiver of any default of the District or the City hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by the District or the City shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition.

14. The provisions of this License shall extend to, and be binding upon, the District and the City and their respective legal representatives, successors and permitted assigns.

15. The City covenants and agrees to surrender possession of Land to the District upon expiration of term of this License, or upon earlier termination of this License, in as good condition and repair as the same shall be at the commencement of this License, ordinary wear and tear excepted.

16. This License may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which constitute one and the same License.

17. If any provision of this License is determined invalid, the remainder of this License shall remain in effect.

18. The City shall comply with all laws, orders, ordinances, and other public requirements now or hereafter pertaining to the City's use of the Land. The District shall comply with all laws, orders, ordinances, and other public requirements now or hereafter affecting the Land.

19. This License shall be governed by and interpreted in accordance with the laws of the State of Michigan. Further, all disputes and legal proceedings associated with this License shall be governed by and interpreted in accordance with the laws of the State of Michigan. The venue for all such disputes and legal proceedings shall be Oakland County, Michigan.

20. This License terminates and supersedes all prior understandings or agreements on the subject matter hereof. This License may be modified only by a further writing that is duly executed by both parties.

21. This Agreement is not intended to confer any benefit on any person or entity that is not a Party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

WITNESSES:

CITY OF NOVI

ROBERT GATT, Mayor

Dated: _____, 2018

WITNESSES:

NOVI COMMUNITY SCHOOLS

By:

Its:

Dated: _____, 2018