

Memorandum

Department of Public Works



TO: Michael O. Geisel, P.E.
City Administrator

FROM: James A. Eckrich, P.E. *JAE*
Public Works Dir. / City Engineer

DATE: November 5, 2018

RE: Chesterfield Hockey Association Agreement

As you know, the Chesterfield Hockey Association is developing a multi-sport ice complex in Chesterfield Valley, including a parking lot. As detailed in the attached memorandum from Armstrong Teasdale, the construction of the parking lot is an authorized transportation project eligible for reimbursement through the Chesterfield Valley Transportation Development District (TDD). In order to comply with the terms necessary to receive reimbursement, the Chesterfield Hockey Association is required to provide the City and TDD an easement to allow use of the parking lot.

The attached ordinance authorizes the City of Chesterfield to enter into an Easement Agreement with the Chesterfield Hockey Association for use of the parking lot. The Easement Agreement stipulates that Chesterfield Hockey will be responsible for all parking lot maintenance.

Action Recommended

This matter should be forwarded to the Planning and Public Works Committee for its consideration of the attached ordinance authorizing the above-described Easement Agreement. If recommended for approval by the Planning and Public Works Committee, the matter should then be forwarded to the full City Council for consideration of the attached ordinance.

Please forward to PPW for review and recommendation to full council.

Michael O. Geisel 2018-11-5

Memorandum

To: Mike Geisel; Jim Eckrich
From: Armstrong Teasdale LLP
Date: November 5, 2018
Subject: Easement and Maintenance Agreement Ordinance

This memorandum describes the purpose of the proposed ordinance, attached, approving an Easement and Maintenance Agreement (“Easement Agreement”) and authorizing the City of Chesterfield, Missouri (“City”) to enter into the same.

The proposed ordinance authorizes the City to enter into the Easement Agreement with the Chesterfield Valley Transportation Development District (the “Transportation District”) and Chesterfield Hockey Association, Inc. (the “Association”). The Association is developing a multi-sport ice complex in the City. In connection with the development, a parking lot is being constructed. The parking lot will be an authorized transportation project eligible for assistance by the Transportation District with eligible costs. To be eligible for assistance, the Association is required to give the City and the Transportation District an easement to use the parking lot. The proposed Easement Agreement defines the easement rights of the City and Transportation District, as well as obligating the Association to make required maintenance and repairs to the parking lot.

If approved, the ordinance will authorize the City to enter into the Easement Agreement in substantially the form attached to the proposed ordinance. Proposed exhibits and certain blanks for information will be completed when the Association furnishes that information; the Association has been requested to furnish a more detailed drawing prepared by the Association’s engineer to replace the placeholder drawing for Exhibit C to the Easement Agreement.

Please let us know if you have any questions.

HMM

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY OF CHESTERFIELD, MISSOURI TO ENTER INTO AND EXECUTE AN EASEMENT AND MAINTENANCE AGREEMENT BY AND AMONG CHESTERFIELD HOCKEY ASSOCIATION, INC., THE CHESTERFIELD VALLEY TRANSPORTATION DEVELOPMENT DISTRICT, AND THE CITY IN CONNECTION WITH A CERTAIN TRANSPORTATION DEVELOPMENT PROJECT IN THE CITY, AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, the City of Chesterfield, Missouri (the “*City*”) has entered into an Intergovernmental Cooperation Agreement (the “*Transportation Agreement*”) among the City, St. Louis County, Missouri (the “*County*”) and the Chesterfield Valley Transportation Development District (the “*Transportation District*”), pursuant to which the various parties have provided for the responsibility for preliminary and final design, right-of-way acquisition, construction, administration and maintenance of each particular portion of the transportation projects identified in the Transportation Agreement (collectively, the “*Transportation Projects*”), and the Transportation District is responsible for providing funding for the Transportation Projects as provided for in the Transportation Agreement; and

WHEREAS, one authorized Transportation Project involves the construction of a parking lot (the “*Parking Lot*”) to support the development of a multi-sport ice facility (the “*Complex*”) by Chesterfield Hockey Association, Inc. (the “*Association*”); and

WHEREAS, in connection with the development of Complex, including the Parking Lot, the Association has agreed to grant to the City and the Transportation District an easement for the use of the Parking Lot; and

WHEREAS, in connection with the grant of such easement to the City and the Transportation District, the City, the Transportation District, and the Association desire to enter into that certain Easement and Maintenance Agreement substantially in the form of **Exhibit A** attached hereto and incorporated herein by reference (the “*Easement Agreement*”), which among other things, provides for the easement rights in favor of the City and the Transportation District respecting the Parking Lot and the maintenance and repair obligations of the Association respecting the Parking Lot; and

WHEREAS, the City Council of the City hereby finds and declares that it is desirable and in the best interests of the City that the City enter into the Easement Agreement substantially in the form attached hereto.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. The City Council hereby approves the Easement Agreement in substantially the form set forth as **Exhibit A**, attached hereto and incorporated by reference.

Section 2. The City is hereby authorized to enter into, and the City Administrator of the City of Chesterfield and the City Clerk are hereby authorized and directed to execute, seal, attest and deliver, for and on behalf of the City, the Agreement, such other documents, certificates, or instruments as may be necessary or desirable to carry out and comply with the

intent of this Ordinance and with the provisions of the Easement Agreement.

Section 3. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this _____ day of _____, 2018.

PRESIDING OFFICER

Bob Nation, MAYOR

ATTEST:

Vickie Hass, CITY CLERK

EXHIBIT A

[Follows]

Space Above for Recorder's Use Only

DOCUMENT COVER SHEET

TITLE OF DOCUMENT: Easement and Maintenance Agreement

DATE OF DOCUMENT: _____, 20__

GRANTOR: CHESTERFIELD HOCKEY ASSOCIATION, INC.

Mailing Address: P.O. Box 335
Chesterfield, Missouri 63006
Attn: Mark Kraus

GRANTEES: CHESTERFIELD VALLEY TRANSPORTATION
DEVELOPMENT DISTRICT

Mailing Address: 690 Chesterfield Parkway West
Chesterfield, Missouri 63017
Attn: Executive Director

CITY OF CHESTERFIELD, MISSOURI

Mailing Address: 690 Chesterfield Parkway West
Chesterfield, Missouri 63017
Attn: City Administrator

LEGAL DESCRIPTION: **Exhibit B** attached hereto and incorporated herein by reference

REFERENCE BOOK & PAGE: N/A

Upon Recording Return to:

Robert Klahr, Esq.
Armstrong Teasdale LLP
7700 Forsyth Boulevard, Suite 1800
St. Louis, Missouri 63105

EASEMENT AND MAINTENANCE AGREEMENT

This EASEMENT AND MAINTENANCE AGREEMENT (this “*Agreement*”) is made and entered into as of this ___ day of _____, 20___ (the “*Effective Date*”) by and between CHESTERFIELD HOCKEY ASSOCIATION, INC., a Missouri nonprofit corporation (“*Grantor*”), the CHESTERFIELD VALLEY TRANSPORTATION DEVELOPMENT DISTRICT, a political subdivision of the State of Missouri (the “*District*”), and the CITY OF CHESTERFIELD, MISSOURI, a political subdivision of the State of Missouri (the “*City*” and together with the District, the “*Grantee*”).

RECITALS:

A. Grantor is the owner of certain real property located in the City of Chesterfield, County of St. Louis, and State of Missouri, as described on Exhibit A, attached hereto and incorporated herein by reference (“*Grantor’s Property*”), on which Grantor has constructed an ice and multi-sport facility (the “*Sportscomplex*”) and other improvements related thereto (together with the Sportscomplex, the “*Project*”); and

B. As part of the Project, Grantor has constructed or will construct certain transportation related improvements, including without limitation a _____ [square foot] [acre] parking lot together with the accompanying grading, drainage, pavement, curb, gutter, sidewalk, storm water facilities, structures (including any architectural treatments related thereto), signing, striping, lighting, traffic signals, landscaping or other similar or related infrastructure or improvements in connection with such parking lot (the “*Parking Lot*”), which Parking Lot is located on Grantor’s Property, as legally described on Exhibit B, attached hereto and incorporated herein by reference and depicted on Exhibit C, attached hereto and incorporated herein by reference; and

C. Grantor and District entered into that certain Transportation Development Agreement dated December 1, 2017 (the “*Development Agreement*”) and recorded on _____, 20___, with the St. Louis County, Missouri Recorder of Deeds in Book _____, Page _____, wherein the Grantor and District agreed to certain terms, conditions, obligations, and requirements in connection with the construction and development of the Project; and

D. Pursuant to the Development Agreement and in consideration of the District’s financing of the Parking Lot, the parties agreed to enter into this Agreement whereby Grantor would grant an easement in and to the Parking Lot for the benefit of Grantee, while reserving the right and obligation to maintain the Parking Lot, and Grantee would accept said easement in exchange for the mutual promises and considerations provided herein and in the Development Agreement.

WITNESSETH:

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, Grantor, the District, and the City hereby agree as follows:

1. **Easement.** Grantor hereby grants, gives and conveys to Grantee a non-exclusive right, privilege and easement to use the Parking Lot from time to time as legally described on Exhibit B, attached hereto and incorporated herein by reference and depicted on Exhibit C, attached hereto and incorporated herein by reference (the “*Easement Area*”), for the purposes of ingress and egress, public travel and parking of vehicles upon completion of construction of such Parking Lot (the “*Easement*”). Grantee’s Easement rights shall be shared in common with the invitees, licensees, employees, contractors and guests of Grantor and its tenants of the Project. The Easement shall terminate without any additional action of Grantor or Grantee upon the later of (i) the date upon which the Subordinate Bonds and any

Subordinate Obligations (as defined in the Development Agreement) are satisfied in full, or (ii) the date upon which the Impact Fee Payments (as defined in the Development Agreement) are satisfied and paid in full.

Grantor shall have the right, from time to time, to change the location of any portion of the Parking Lot on Grantor's Property provided such relocation does not reduce or unreasonably impair the usefulness or function of the portion of the Parking Lot which Grantor seeks to relocate and that access for pedestrian and vehicular traffic on Grantor's Property is not unreasonably restricted or its enjoyment in any way materially impaired by such changes. In such event, Grantor shall record with the St. Louis County Recorder of Deeds a certificate setting forth the legal description of such relocated Parking Lot as it exists on Grantor's Property.

Grantor, on behalf of itself and all future owners of Grantor's Property, expressly reserves all of its rights which are not inconsistent with the use and enjoyment of the Easement and this Agreement, including, without limitation, reasonable restrictions upon use of the Parking Lot, as follows:

(a) The storage of wrecked or disassembled vehicles in various stages of disrepair anywhere in the Parking Lot is expressly prohibited;

(b) No person shall park a vehicle in the Parking Lot for the principal purpose of displaying such vehicle for sale;

(c) No person shall park a vehicle in the Parking Lot for the principal purpose of repairing such vehicle except such repairs necessitated by an emergency;

(d) No person shall park any vehicle in the Parking Lot in such a manner or under such conditions as to leave available less than ten (10) feet of the width of roadway for free movement of vehicular traffic;

(e) No person shall park a vehicle with a gross licensed weight in excess of twelve thousand (12,000) pounds in the Parking Lot, except for a period of not to exceed two (2) hours for the purpose of and while actually engaged in loading and unloading merchandise or passengers;

(f) No person shall park a motor vehicle within the Parking Lot for a period of time exceeding six (6) hours during such hours that the Project is open to the general public; and

(g) No person shall park a motor vehicle within the Parking Lot for a period of time exceeding two (2) hours during such hours that the Project is not open to the general public.

2. **Maintenance by Grantor.** Grantor shall be solely responsible for any and all costs associated with the maintenance and replacement, if necessary, of the Easement Area and all improvements thereon, including all road paving, repair, snow and debris removal, or other necessary maintenance to make the Parking Lot safe and passable. If at any time Grantor shall, in the reasonable judgment of the District or the City, fail to adequately maintain and replace, if necessary, the Easement Area and all improvements thereon, the District or the City may, upon thirty (30) days prior written notice to Grantor (or, if such failure cannot be cured during such thirty (30) day period, then after expiration of such period as is reasonable and necessary to complete such cure provided Grantor has commenced and diligently pursued such cure prior to the expiration of such thirty (30) day period), arrange for the performance of such maintenance and replacement, if necessary, of the Easement Area, including all road paving, snow and debris removal, or other necessary maintenance as the District or the City deems

necessary to make the Parking Lot safe and passable. Grantor shall promptly reimburse the District or the City, respectively, for all reasonable costs and expenses of such maintenance and replacement, upon receipt of an invoice for the same. The District or the City's failure to perform any obligations of Grantor shall not alter the liability allocation hereunder.

3. **Security for Performance.** Grantor granted a Subordinate Deed of Trust and Security Agreement dated _____, 20____, and recorded on _____, 20____, in Book _____, Page _____ with the St. Louis County, Missouri Recorder of Deeds in favor of the District as security for Grantor's performance of its responsibilities and obligations under this Agreement and the Development Agreement, which encumbers the Parking Lot (the "***Deed of Trust***").

4. **Default by Grantor; Remedies.** If at any time Grantor shall, in the reasonable judgment of the District or the City:

- (a) Fail to properly perform its obligations under this Agreement, or
- (b) Fail to operate the Sportscomplex on Grantor's Property, or
- (c) Fail to make any payment (or re-payment) as provided under the Development Agreement, including, but not limited to, any Impact Fee Payment, then

The District or the City may, in their sole discretion, after written notice to Grantor and at least thirty (30) days' (or such additional time as is required by the Development Agreement or Deed of Trust) opportunity to cure, to exercise their rights under this Agreement and as permitted by law, including, but not limited to:

- (a) Upon written notice as provided herein, curing such default at Grantor's sole expense by Grantee arranging for the performance of such maintenance and replacement, if necessary, of the Easement Area, as provided herein; or
- (b) District exercising its rights under the Deed of Trust, including, but not limited to, foreclosing on the Parking Lot.

5. **Indemnification.** Grantor shall indemnify, hold harmless and defend Grantee from and against any and all of the claims, actions, suits, crossclaims, counterclaims, third party actions, damages, liabilities, and expenses, including reasonable attorneys' fees, sustained by Grantee or any third persons, in connection with loss of life, personal injury, bodily injury or damage to property, arising from or out of the negligence, willful misconduct, or violation of law by Grantor, its agents or contractors, and directly in connection with Grantor's breach of its obligations pursuant to this Agreement. Grantee shall indemnify, hold harmless and defend Grantor from and against any and all of the claims, actions, suits, crossclaims, counterclaims, third party actions, damages, liabilities and expenses, including reasonable attorneys' fees, sustained by Grantor or any third persons in connection with loss of life, personal injury, bodily injury or damage to property arising from or out of the negligence or willful misconduct of Grantee, its agents or contractors, only as it relates to activities in the Easement Area for purposes of maintenance by Grantee as may occur under this Agreement.

6. **Estoppel.** If requested by either Grantee or Grantor, the other party will within ten (10) days provide a written statement for the benefit of the other party and its assignee or lender stating that the Development Agreement, this Agreement, and the Deed of Trust, as all may be amended from time to time, is in full force and effect without modification or default, if the same be true, and such other reasonable provisions as may be requested.

7. **Notices.** All notices, consents, approvals and other communications which may be or are required to be given by either Grantor or Grantee under this Agreement shall be properly given only if made in writing and sent by (i) hand delivery, (ii) U.S. Certified Mail, Return Receipt Requested, or (iii) a nationally recognized overnight delivery service (such as Federal Express, UPS Next Day Air, Purolator Courier or Airborne Express), with all delivery charges paid by the sender and addressed to Grantor or Grantee, as applicable, as follows, or at such other address as each may request in writing. Such notices shall be deemed received on the date of delivery. The refusal to accept delivery shall constitute acceptance and, in such event, the date of delivery shall be the date on which delivery was refused. Said addresses for notices are to be as follows:

If to Grantor: Chesterfield Hockey Association, Inc.
P.O. Box 335
Chesterfield, Missouri 63006
Attn: Mark Kraus

With a copy to:

The Staenberg Group
2127 Innerbelt Business Center Drive, Suite 310
St. Louis, Missouri 63114
Attn: Tim Lowe

And a copy to:

Stinson Leonard Street LLP
7700 Forsyth Boulevard, Suite 1100
St. Louis, Missouri 63105
Attn: Thomas B. Smallwood

If to District: Chesterfield Valley Transportation Development District
690 Chesterfield Parkway West
Chesterfield, Missouri 63017
Attn: Executive Director

With a copy to:

Armstrong Teasdale LLP
7700 Forsyth Boulevard, Suite 1800
St. Louis, Missouri 63105
Attn: Robert Klahr

If to City: City of Chesterfield, Missouri
690 Chesterfield Parkway West
Chesterfield, Missouri 63017
Attn: City Administrator

8. **Attorneys' Fees.** If either party brings an action against the other based upon this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, costs of litigation and court costs from the other party.

9. **Entire Agreement; Successor and Assigns.** This Agreement and any instruments to be delivered by the parties pursuant to the provisions hereof constitute the entire Agreement between the parties with respect to the subject matter hereof and shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns. This Agreement, and the Easement granted herein, shall run with and bind Grantor's Property and shall run with and benefit the Easement Area, the Parking Lot thereon as an appurtenance thereto, and the real property adjacent thereto.

10. **Modification; Waiver.** This Agreement shall not be modified or amended except pursuant to an instrument in writing executed and delivered on behalf of each of the parties hereto (or their successors and assigns). The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

11. **Authorization.** The parties hereto represent and warrant that they have the authority and power to enter into this Agreement and to consummate the transaction provided for herein. This Agreement constitutes a legal binding, valid and enforceable obligation of the parties, and there are no claims or defenses, personal or otherwise, or offsets whatsoever to the enforceability or validity of this Agreement.

12. **Execution.** This Agreement may be executed in electronic format and in more than one counterpart, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

(The remainder of this page is intentionally left blank.)

GRANTEE:

CHESTERFIELD VALLEY TRANSPORTATION
DEVELOPMENT DISTRICT

By: _____
Michael Geisel, Chair

ATTEST:

Bob Nation, Secretary

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this _____ day of _____, 20 ____, before me personally appeared Michael Geisel, the Chairman of the Chesterfield Valley Transportation Development District, known to me to be the person who executed the foregoing instrument, and did state that the seal affixed to the within instrument is the seal of said District and that said instrument was signed and sealed in behalf of said District by authority of its Board of Directors, and acknowledged to me that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires: _____

GRANTEE:

CITY OF CHESTERFIELD, MISSOURI

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this _____ day of _____, 20____, before me personally appeared _____, the _____ of the City of Chesterfield, Missouri, known to me to be the person who executed the foregoing instrument, and did state that the seal affixed to the within instrument is the seal of said City and that said instrument was signed and sealed in behalf of said City by authority of its governing authority, and acknowledged to me that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires: _____

EXHIBIT A

Legal Description of Grantor's Property

A tract of land being part of Lot 3 of the Nicholas Mueller Estate, according to the plat thereof as recorded in Plat Book 2 Page 25 of the Saint Louis County Records located in U.S. Survey 371, Township 45 North, Range 3 East, City of Chesterfield, Saint Louis County, Missouri and being more particularly described as:

Beginning at a Stone found at the southwest corner of above said Lot 3, said point also being located on the south line of said U.S. Survey 371 ; thence Northwardly along the West line of said Lot 3, North 12 degrees 15 minutes 59 seconds West, 823.42 feet to the southern right-of-way line of State Highway 40 T.R. Relocation as described in Cause No. 290860 of the Circuit Court of Saint Louis County, Missouri, said point also being located on a non-tangential curve to the left having a radius of 3,014.79 feet; thence along said right-of-way line the following courses and distances: along said curve with an arc length of 682.52 feet and a chord which bears South 77 degrees 28 minutes 50 seconds East, 681.06 feet to a point of tangency; South 83 degrees 57 minutes 58 seconds East, 122.32 feet; North 12 degrees 11 minutes 22 seconds West, 10.53 feet and South 83 degrees 57 minutes 58 seconds East, 56.38 feet; thence departing said right-of-way line, South 12 degrees 09 minutes 00 seconds East, 493.92 feet to the south line of above said U.S. Survey 371, said point also being located on the north line of a tract of land as conveyed to Clayton Forsyth Realty, LLC, by instrument recorded in Book 20873, Page 197 of above said records; thence along the north line of said Clayton Forsyth Realty, LLC tract and the north line of a tract of land as conveyed to Downtown Partners, LLC, by instrument recorded in Book 18763, Page 2637 South 77 degrees 51 minutes 00 seconds West, 705.00 feet to the northwest corner of said Downtown Partners, LLC tract; thence along the west line of last said tract, South 12 degrees 06 minutes 25 seconds East, 259.87 feet to the northern right-of-way line of Chesterfield Airport Road, variable width, said point also being located on a non-tangential curve to the right having a radius of 3,901.54 feet; thence along said right-of-way line and along said curve with an arc length of 114.13 feet and a chord which bears North 58 degrees 00 minutes 03 seconds West, 114.12 feet to the southeast corner of a tract of land as conveyed to Winter Brothers Material Company, by instrument recorded in Book 22034, Page 3765 of above said records, thence along the east line of said Winter Brothers Material Company tract, North 12 degrees 7 minutes 26 seconds West, 180.38 feet to the POINT OF BEGINNING. Containing 517,635 square feet or 11.883 acres, more or less according to calculations performed by Stock & Associates Consulting Engineers, Inc. on September 10, 2018.

EXHIBIT B

Legal Description of Parking Lot

[to be inserted]

EXHIBIT C

Map Depicting Parking Lot

[to be inserted]

