



CITY of NOVI CITY COUNCIL

Agenda Item F
July 23, 2018

SUBJECT: Approval of a License Agreement with The Country Place Condominium Association to construct and maintain a 9-stall parking lot addition within the City-owned Eden Drive right-of-way.

SUBMITTING DEPARTMENT: Department of Public Works, Engineering Division

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

The City's Engineering Division was approached by the Country Place Condominium Association about the permission and possibility of building a small parking lot addition immediately off of the back of curb of the existing stub street, Eden Drive (see attached Exhibit "A"). Historically, the Association has not had sufficient parking facilities for the two buildings located adjacent to the aforementioned Eden Drive. This insufficiency creates an overflow of vehicles for those residents consistently parking along the main internal thoroughfare of Broquet Drive (the only access point to and from Meadowbrook Road). This is not only dangerous for their residents traversing through the area, but also for the City to properly maintain (street sweeping and snow plowing) and provide emergency service access along Broquet Drive. The Eden Drive stub street is approximately 175-feet in length and dead ends at the Country Place Association property line, which is also a large, regulated wooded wetland; therefore, extending or connecting Eden Drive to another street remains highly unlikely.

Since the City is currently performing work within this development as part of the 2018-2019 Concrete Repair Program, the Association asked that our contractor, Great Lakes Contracting Solutions, LLC implement this parking lot effort along with their contracted work. The Engineering Division assembled the attached Work Change Directive and Change Order No. 1. The estimated dollar value for this additional work is \$11,359.50.

This executed License Agreement ensures that the Country Place Condominium Association will operate and maintain this newly completed lot as part of their General Common Elements for the Condominium Subdivision Plan No. 87. The Agreement also stipulates the Association will provide a one-time, full as-constructed reimbursement to the City upon completion of the work. The City Attorney drafted the attached agreement and found no legal impediment to entering the agreement (Beth Saarela, June 27, 2018).

RECOMMENDED ACTION: Approval of a License Agreement with The Country Place Condominium Association to construct and maintain a 9-stall parking lot addition within the City-owned Eden Drive right-of-way.

AGREEMENT AND LICENSE FOR PARKING LOT IMPROVEMENTS

THIS LICENSE AGREEMENT ("Agreement") made effective the 28 day of June, 2018, by and between the CITY OF NOVI, Oakland County, Michigan, herein called the "City", 45175 Ten Mile, Novi, 48375, and THE COUNTRY PLACE CONDOMINIUM ASSOCIATION, a Michigan non-profit corporation, whose address is 41486 Wilcox Road Plymouth, MI 48170-3104 USA, and its successors and assigns, herein called the "Association."

RECITALS

A. The Association operates and maintains the General Common Elements for the Country Place Condominium, Oakland County Condominium Subdivision Plan 87 (the "Condominium"), which includes private parking courts serving the Condominium.

B. At or near the eastern boundary of the Condominium, the Association lacks sufficient private parking spaces to serve the Co-Owners of the Condominium. As a result of the lack of existing parking, the Co-Owners park vehicles along the traveled portion of the existing public right-of-way for Broquet Drive and paved portion of Eden Court.

C. The parking of vehicles along Broquet Drive and Eden Court interferes with the use and maintenance of the public right-of-way and inhibits the City's snow removal activities.

D. The Association has requested and the City has agreed to cooperate with the Association to create additional parking spaces outside of the existing paved portion of Eden Court but within the City's public right-of-way to allow Co-owners to park their vehicles and vehicles of guests and invitees, in the location shown in the attached and incorporated Exhibit A (the "Additional Parking").

E. The City has an on-going paving project in the area of the proposed Additional Parking known as the 2018-2019 Concrete Repair Program (the "Paving Project").

F. The City and the Association have agreed to add the Additional Parking to the Paving Project by Change Order No. 1, attached hereto and incorporated as Exhibit B.

G. The cost of the construction of the Additional Parking is estimated to be Eleven Thousand Three Hundred and Fifty-Nine and 50/100 (\$11,359.50) Dollars.

H. The Association has agreed to reimburse the City for 100% of the actual cost of the construction of the Additional Parking, in one lump sum payment, to be made within thirty (30) days of receipt of an invoice from the City following the completion and inspection of the Additional Parking.

I. Upon completion of inspection, the Association, pursuant to the terms of this License Agreement, will commence operating, maintaining and repairing the Additional Parking, in perpetuity, until such time as the Additional Parking is removed and the area restored or used for other public right-of-way purposes.

J. The approval by the City for the construction, operation, maintenance and repair of the Additional Parking within the City's existing public-right-of-way is subject to several conditions as set forth herein;

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows, and the City grants a license to Association as follows:

1. Grant of License. Upon completion of the construction of the Additional parking, the City hereby grants to Association a revocable license to use, operate, maintain, repair, and replace the Additional Parking as shown on Exhibit A.

Although the Association is granted under this Agreement and License the right to operate, use, maintain, repair and replace the Improvements, Association agrees that it has no ownership interest in the public right-of-way. "Maintain," shall mean and include, debris, snow and ice removal, maintenance and repairs including repairing pot holes and abnormal cracks, adding new materials if necessary, providing for proper drainage, constructing all needed structures (e.g., without limitation, lateral support, drainage, etc.), resurfacing and such other action as shall be necessary to provide structural integrity and to provide proper drainage of storm water runoff.

2. Term/Revocation. This Agreement does not grant Association a property interest in the public right-of-way or the Parking Addition, and as a revocable license, may be terminated or revoked by the City at any time if the Additional Parking is not used and/or maintained to the City's satisfaction, in accordance with the terms of this Agreement, or in the event that the City, in its reasonable discretion, requires use of the public right-of-way for highway, utility or other public purpose.

3. Indemnification. The Association shall indemnify and hold harmless the City, its elected and appointed officials, employees, and volunteers, and other persons working on behalf of the City, from and against any and all claims, demands, suits, or loss, including all costs and attorneys fees connected therewith, and from any and all damages that may be asserted, claimed, or recovered for personal injury, including bodily injury or death and/or property damage, including loss of use thereof, arising out of or in any way connected or associated with this Agreement and the design, construction, maintenance, or use of the Additional Parking. The City shall provide notice to Association within a reasonable time of the receipt of any claim arising under this Agreement or relating to the Additional Parking.

4. Insurance. The City, and its contractors retained to maintain, repair and/or replace the Additional Parking, shall provide and maintain during the entire duration of this Agreement, the following insurance coverages from a good and reputable company or companies doing business in the State of Michigan:

- A. Workers' Compensation & Employers' Liability Insurance, Michigan Statutory Limits of Liability.
- B. Commercial General Liability Insurance on an occurrence basis with limits of liability not less than one million dollars (\$1,000,000.00) per occurrence and aggregate combined single limit for Personal Injury, Bodily Injury, Property Damage and XCU. Coverage shall include extensions for Contractual Liability and Independent Contractors Coverage.
- C. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverage, with limits of liability not less than one million dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury and Property Damage. Coverage shall include all owner vehicles, all non-owned vehicles, and all hired vehicles.
- D. Umbrella Liability Insurance with limits of liability not less than two million dollars (\$2,000,000.00) per occurrence.
- E. All certificates of insurance other than Workers' Compensation & Employers' Liability Insurance, shall name the City as the additional insured pursuant to endorsement of as follows: "City of Novi, and including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities of the City. Such coverage shall be primary and non-contributory, as evidence by endorsement. The policy shall be endorsed to provide that the City will receive at least 30 days' notice of any cancellation.
- F. The City's Contractor shall include the Association, its Board of Directors and members, as additional insureds on its policies of General Liability, Auto Liability, and Umbrella Coverage, with respect to the initial construction of the Additional Parking.

5. Right of Access. The City retains the full right of access to the Additional Parking at any time. Association hereby confirms its full and unconditional consent to the City's entry upon, access to and inspection of all areas of the Additional Parking at any time desired by the City, with or without advance notice.

6. Payment. The Association shall reimburse the City within 30-days of the receipt of an invoice, following the completion of construction of the Additional Parking, in an amount equivalent to the actual cost of constructing the Additional Parking, as verified by the City.

7. Notices. Notices may be given by personal delivery or certified or first-class mail, postage pre-paid, or by overnight courier at the addresses in the first paragraph of this Agreement.

8. Successors and Assigns. Assignments of this Agreement are not permitted without prior review and approval by the City, including a written amendment to this Agreement.

9. No Third-Party Beneficiaries. This Agreement is not intended to confer any benefit on any person or entity that is not a Party, or a successor or assign, to this Agreement.

10. Severability. If any section, subsection, clause, phrase or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be considered a separate, distinct and independent portion of this Agreement, and the remaining portions of this Agreement shall remain in full force and effect.

11. Amendments. This Agreement may be amended at any time, in writing, by mutual consent of the Parties. No amendment to this Agreement shall be effective and binding upon the Parties unless it expressly makes reference to this Agreement, is in writing, and is signed and acknowledged by duly authorized representatives of both Parties and approved by the City Council.

12. No Tenant. Association shall not by virtue of this Agreement be deemed to have become the tenant of the City or the Additional Parking, nor to have been given or accorded, as against the City, possession of the Additional Parking.

13. Nonwaiver. Unless otherwise expressly provided herein, no waiver by any Party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the waiving Party. No delay or omission in the exercise of any right or remedy accruing to any Party upon any breach under this Agreement by the other Party shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by either Party of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition. All rights or remedies afforded to the Parties hereunder or by law shall be cumulative and not alternative, and the exercise of one right or remedy shall not bar other rights or remedies allowed herein or by law.

14. Governmental Immunity. It is declared 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.

15. Entire Agreement. This Agreement contains the entire agreement among the Parties pertaining to the subject matter hereof and all prior negotiations and agreements are merged herein. Neither the City nor the City's agents have made any representations except those expressly set forth herein, and no rights or remedies are or shall be acquired by the Licensee by implication or otherwise unless expressly set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF NOVI

By: _____
Robert J. Gatt, Mayor

By: _____
Cortney Hanson, Clerk

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me on this _____ day of _____, 2018, by Robert J. Gatt, Mayor and Cortney Hanson, Clerk, on behalf of the City of Novi, a Municipal Corporation.

Notary Public
Oakland County, Michigan
My Commission Expires: _____

**COUNTRY PLACE CONDOMINIUM
ASSOCIATION,** a Michigan nonprofit
corporation

Sarah Marchioni

By: Sarah Marchioni
Its: President

The foregoing instrument as acknowledged before me in Oakland County,
Michigan, on this 28 day of June, 2018, by Sarah Marchioni, President of the Country
Place Condominium Association, a Michigan nonprofit corporation, on behalf of the corporation.

KATHERINE OPPERMANN
NOTARY PUBLIC, STATE OF MI
COUNTY OF OAKLAND
MY COMMISSION EXPIRES Sep 5, 2024
ACTING IN COUNTY OF Oakland

[Signature]
Notary Public
Oakland County, MI

My Commission Expires: Sep. 5, 2024

EXHIBIT A
ADDITIONAL PARKING



BROOKE RD

CONC PAVT W/ INTEGRAL CURB 8 INCH
AGG BASE 21AA LIMESTONE 4 INCH
CURB (DET F2)

BROOKE RD



MEADOWBROOK ROAD ↓

EXHIBIT B

CHANGE ORDER - ESTIMATED COST

