

ACCESS, PARKING, AND TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS ACCESS, PARKING AND TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (the “**Agreement**”) is made and entered into as of _____, 2023 (“**Effective Date**”), by and among Independent School District No. 625, a school district and political subdivision under the laws of the State of Minnesota (“**District**”) and City of Saint Paul, a municipal corporation under the laws of the State of Minnesota (“**City**”).

RECITALS:

A. District is the fee owner of the land with an address of 1845 Sheridan Avenue West, St. Paul, MN 55116 and legally described in Exhibit A (collectively, “**District Lot**”).

B. City is the fee owner of the land currently identified by PID No. 21-28-23-24-0001 and legally described in Exhibit B (“**City Lot**”). The City Lot and the District Lot are collectively referred to as the “**Lots**” and individually as a “**Lot**”.

C. The City desires to grant to the District, and the District desires to obtain from the City, a (1) a perpetual access and parking easement on the portion of the City Lot legally described on Exhibit C (the “**Easement Area**”); and (2) a temporary construction easement to construct improvements in the Easement Area on the City Lot similar to those shown on the site plan in Exhibit D and Exhibit D-1 (the “**Improvements**”).

NOW, THEREFORE, in consideration of the covenants contained herein, including the foregoing recitals, which are incorporated into this Agreement, and other good and valuable consideration, the parties agree as follows:

1. Definitions.

1.1 “**Authorized Parties**” means the District’s students, tenants, occupants, invitees, employees, vendors, contractors, lenders and agents.

1.2 “**Owner**” means the individual, entity, trust or other person that is the fee owner of each Lot.

2. Easements for Access and Parking.

2.1 Grant and Use of Easement for Access and Parking. City hereby grants and conveys to District, for the benefit of the Owner of the District Lot and its Authorized Parties, a perpetual, non-exclusive easement over and within the Easement Area for (1) the purpose of passage, ingress, egress and

access by vehicles, trucks, other motorized and non-motorized methods of transportation, and pedestrians; and (2) parking vehicles, trucks, and other motorized and non-motorized methods of transportation over and within the Easement Area, all subject to the terms and conditions hereof (“**Access and Parking Easement**”). The Access and Parking Easement is appurtenant to the District Lot. The District will use the Easement Area for access to the District Lot from Sheridan Avenue West, drop-off and pick-up lanes, and parking for the District Lot. The use of the Easement Area includes construction, maintenance, repair, replacement, operation, regulation and removal of all improvements within the Easement Area in accordance with this Agreement.

2.2 Maintenance of the Easement Area. District and City have entered into a separate unrecorded Site Operation Agreement regarding responsibility for conducting and paying for day-to-day maintenance and minor repairs of all improvements within the Easement Area, including mowing, snow removal and street sweeping. District shall, at its sole cost, be responsible for all major repairs and replacements of the Improvements, in the District’s sole discretion. The Easement Area shall be maintained in good order, condition and repair consistent with the maintenance standards of similar improvements in the Minneapolis/St. Paul metropolitan area and in compliance with all governmental regulations all as set forth in the Site Operation Agreement.

2.3 Changes to or Relocation of Improvements within the Easement Area. The District may, without approval from the City, make non-structural and/or surface changes to the Easement Area.. The District may, with prior approval from the City, which approval shall not be unreasonably delayed, withheld, or conditioned, make structural changes, alterations and modifications to the Improvements that are consistent with use for access, drop-off/pick-up, and parking.

3. Temporary Construction Easement.

3.1 Grant of Temporary Construction Easement. City hereby grants and conveys to District, for the benefit of the Owner of the District Lot and its Authorized Parties, a temporary easement for use and access on, over, and under the Easement Area to remove any existing improvements and to construct the Improvements, including but not limited to, storage, staging, grading, and tree removal (“**Temporary Construction Easement**”). The Temporary Construction Easement is appurtenant to the District Lot.

3.2 Term of the Temporary Construction Easement. The Temporary Construction Easement shall automatically terminate upon completion of the Improvements, but in any event, no later than December 31, 2024. District shall provide City with the construction schedule within thirty (30) days of the Effective Date. No additional documentation is needed to document the termination of the Temporary Construction Easement.

3.3 General Standards for Construction. Construction of the Improvements will be performed in a good and workmanlike manner and in compliance with all applicable governmental regulations. The District will keep the Easement Area clean during construction of the Improvements. During the term of the Temporary Construction Easement, the District may restrict the public’s access to the Easement Area.

4. Liability. Each party will be responsible for its own acts, omissions, and the results thereof to the extent authorized by law and will not be responsible for the acts or omissions of the other party and the results thereof. Any liability of the City and the District will be governed by Minnesota Statutes Chapter 466 and other applicable law.

5. Insurance. District shall carry the following insurance coverage:

Commercial General Liability Insurance including blanket commercial liability coverage, personal injury liability coverage, and broad form property damage liability endorsement with a combined single limit of not less than \$1,500,00 per occurrence and \$2,000,000 aggregate shall be purchased by District. Such insurance shall (i) name the City of Saint Paul as additional insured; (ii) be primary with respect to City’s insurance or self-insurance; (iii) not exclude explosion, collapse, and underground property damage; (iv) be written on an “Occurrence Form” policy basis. District may satisfy the above insurance requirements using an umbrella or other excess liability insurance policies.

Worker’s Compensation Insurance with not less than statutory minimum limits and Employer’s Liability Insurance with minimum limits of at least \$100,000 per accident and with an all-states endorsement.

6. Taxes and Assessments. City shall pay all real property taxes and assessments on the City Lot. The District shall pay all real property taxes and assessments on the District Lot.

7. Covenants to Run with the Land. The easements, covenants, conditions and restrictions contained in this Agreement will run with the land. Such easements, covenants, conditions and restrictions will inure to the benefit and will be binding upon City and District, and their respective successors and assigns, from the date of this Agreement, irrespective of the manner in which such right, title or interest is acquired. The obligations of the City, District and any other Owner under this Agreement are terminated upon the sale or other transfer of its Lot, except a transferor will remain liable for any obligations that first arose prior to the date of such transfer and were required to be performed by the date of such transfer.

8. Recording. This Agreement will be recorded against the Lots in the proper Office of the County where the Lots are located. The costs to record this document will be paid by District.

9. Amendment and Termination. This Agreement may only be amended, modified or terminated in writing signed by the Owner of each Lot. Any attempted amendment or termination without all such signatures shall be of no force or effect, except the automatic termination of the Temporary Construction Easement in Section 3.2 above.

10. Notices. Any notice required or permitted pursuant to this Agreement will be in writing and delivered by (a) personal delivery, (b) reputable overnight delivery service with proof of delivery, (c) United States mail, postage prepaid, either certified or first class mail, or (d) email. Any notices by email will be followed by delivery by one of the other means, which delivery by such other means will not be subject to timing deadlines. All notices will be sent to a party at the address set forth below, or to such other address as last provided to or known by the party sending such notice. Refusal to accept delivery of a notice or the inability to deliver a notice because of an address that was not properly given will not defeat or delay the giving of notice. Notices will be deemed given upon the earlier of the date of actual receipt or (i) at the time of delivery if by personal delivery, or (ii) as of the date of first attempted delivery if by overnight delivery, or (iii) upon receipt by email as evidenced by a receipt transmission report.

If to City:

City of St. Paul

Director, Department of Parks and Recreation
400 City Hall Annex
25 West 4th Street
Saint Paul, MN 55102
Andy.rodriquez@ci.stpaul.mn.us

With copies to: City of Saint Paul
Office of Financial Services
15 W Kellogg Blvd, 700 City Hall
St. Paul, MN 55102

Real Estate Attorney
Office of the City Attorney
15 W Kellogg Blvd, 400 City Hall
St. Paul, MN 55102
Sarah.sullivan@ci.stpaul.mn.us

If to District: Independent School District No. 625
1930 Como Avenue
St. Paul, MN 55108
Attn.: Tom Parent
Email: tom.parent@spps.org

With a copies to: Taft Law
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402
Attn.: Brianna Maershbecker
Email: bmaershbecker@taftlaw.com

Saint Paul Public Schools
360 Colborne St.
St. Paul, MN 55102
Attn.: Charles Long - General Counsel
Email: charles.long@spps.org

11. Estoppel Certificate. Each Owner hereby agrees to execute and deliver an estoppel certificate upon reasonable written request from another Owner, which request will not be more frequent than three times per year. An executed estoppel certificate will be delivered to the requesting Owner within ten (10) days of receipt of written request. The estoppel certificate will state (a) whether or not this Agreement is in full force and effect, (b) whether this Agreement has been amended or modified, and if amended or modified, the nature of such amendment or modification, (c) whether or not the Owner knows of any uncured defaults under this Agreement, and if there are known defaults, specifying the nature of the default, and (d) any amounts owed the Owner by the Owners of other Lots under this Agreement. The estoppel certificate will be in a form reasonably acceptable to the Owner providing the estoppel certificate and the Owner requesting the estoppel certificate.

12. Data Practices. All documents regarding the Improvements shall be handled in accordance with the Minnesota Data Practices Act. Pursuant to Minnesota Statutes, Section 16C.05, subd. 5, any books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the other party and either the Legislative Auditor or the State Auditor as appropriate.

13. Miscellaneous. This Agreement will in all respects be interpreted, construed and enforced according to the laws of the State of Minnesota. In the event any provision of this Agreement will be held to be invalid, unenforceable or in conflict with the law of the jurisdiction, the remaining provisions of this Agreement will continue to be valid, enforceable and not be affected by such holding. No term or condition

of this Agreement will be deemed waived unless expressed in writing. The waiver of any condition or the breach of any term will not be a waiver of any subsequent breach of the same or any other term or condition. This Agreement may be executed separately and independently in any number of counterparts and each and all of which together will be deemed to have been executed simultaneously and regarded as one agreement dated as of the Effective Date. No person other than the Owners will be deemed to have acquired any rights by reason of anything contained in this Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and fully supersedes all prior written or oral agreements between the parties with respect to such matters. The persons executing this Agreement on behalf of a party have been duly authorized to do so, and this Agreement will be binding and fully enforceable in accordance with its terms upon the parties hereto. Nothing contained herein will be deemed to be a gift or dedication to the general public for any public use or purpose whatsoever.

signature pages follow

IN WITNESS WHEREOF, the undersigned have executed this Access, Parking And Temporary Construction Easement Agreement as of the Effective Date.

CITY:

CITY OF SAINT PAUL,
a Minnesota municipal corporation

By: _____
Print: _____
Its: _____

By: _____
Print: _____
Its: _____

By: _____
Print: _____
Its: _____

Approved as to form:

By: _____
Print: _____
Its: _____

CITY ACKNOWLEDGEMENT

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me on _____, 2023, by _____, the Deputy Mayor, of the City of Saint Paul, a Minnesota municipal corporation, on behalf of the municipal corporation.

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me on _____, 2023, by _____, the Director of Finance, for the City of Saint Paul, a Minnesota municipal corporation, on behalf of the municipal corporation.

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me on _____, 2023, by _____, the City Clerk, for the City of Saint Paul, a Minnesota municipal corporation, on behalf of the municipal corporation.

Notary Public

EXHIBIT A
Legal Description of the District Lot

Real property in the City of St. Paul, County of Ramsey, State of Minnesota, described as follows:

Parcel 1:

(Except the east 60 feet) all that part of the North Half of the Southeast Quarter of the Northeast Quarter of the Northwest Quarter, lying southerly of a line drawn from a point on the east line of said Northwest Quarter 786.07 feet from the northeast corner to a point on the west line of the Northeast Quarter of said Northwest Quarter 853.03 feet from the northwest corner of said Northeast Quarter of the Northwest Quarter in Section 21, Township 28, Range 23, Ramsey County, Minnesota.

Parcel 2:

The South Half of the Southeast Quarter of the Northeast Quarter of the Northwest Quarter of Section 21, Township 28, Range 23, Ramsey County, Minnesota, except part thereof for Edgcumbe Road, and excepting therefrom that part of vacated Sheridan Avenue described in the Quit Claim Deed dated December 18, 1979, recorded February 11, 1980, as Document No. 2070964.

PID: 21.28.23.21.0085 and 21.28.23.21.0086

EXHIBIT B
Legal Description of the City Lot

Lots 1 through 28, Block 1, Fairview South Addition, Ramsey County, Minnesota, including all the east-west alley in Block 1, Fairview South Addition, as vacated and discontinued, and described in the City of Saint Paul Council Resolution dated October 24, 1983, recorded October 31, 1983, as Document No. 2198725.

Excepting therefrom those portions vacated for street purposes and described in the City of Saint Paul Council Resolution recorded May 5, 1980, as Document No. 2078213 and as Document No. 2078212.

Together with that part of vacated Sheridan Avenue described in the Quit Claim Deed dated December 18, 1979, recorded February 11, 1980, as Document No. 2070964.

EXHIBIT C

Easement Area Legal Description

That portion of the following described property lying north of the northerly boundary of Sheridan Avenue West as such Avenue exists as of the Effective Date:

Lots 1 through 28, Block 1, Fairview South Addition, Ramsey County, Minnesota, including all the east-west alley in Block 1, Fairview South Addition, as vacated and discontinued, and described in the City of Saint Paul Council Resolution dated October 24, 1983, recorded October 31, 1983, as Document No. 2198725.

Excepting therefrom those portions vacated for street purposes and described in the City of Saint Paul Council Resolution recorded May 5, 1980, as Document No. 2078213 and as Document No. 2078212.

Together with that part of vacated Sheridan Avenue described in the Quit Claim Deed dated December 18, 1979, recorded February 11, 1980, as Document No. 2070964.

EXHIBIT D-1

Zoomed in Depiction of the Improvements (Same depiction as Exhibit D expanded for readability)

