



*c: Jerry
(Orig. contract
attached for
our files.)*

City of Mason

6000 Mason-Montgomery Road
Mason, OH 45040
513-229-8510
Fax: 513-229-8511

August 21, 2007

Kevin Bright
Mason City Schools
211 North East Street
Mason, OH 45040

Dear Kevin:

Enclosed please find duly executed copies of the cooperative agreement between Mason City Schools and the City of Mason for the expansion project.

We look forward to continuing our partnership as we pursue this endeavor.

Sincerely,

Eric Hansen
City Manager

COOPERATIVE AGREEMENT

This Cooperative Agreement is entered into this 23 day JULY, 2007, by and between the City of Mason (the "City") and Mason City School District (the "School District"). All capitalized terms, except as otherwise defined in this Cooperative Agreement, shall have the same meaning as in the Joint Use and Operation Agreement.

WITNESSETH THAT:

WHEREAS, the City and the School District have previously entered into a Joint Use and Operation Agreement, dated effective June 1, 2002 (the "Joint Use Agreement"), that governs the use and operation of the Community Facilities, High School Facilities, and Shared Areas, among other areas; and

WHEREAS, in part, the Joint Use Agreement governs the process for additions and improvements to the Community Facilities, High School Facilities, and Shared Areas;

WHEREAS, in accordance with the Joint Use Agreement, the School District has submitted to the City a site plan as an exhibit to correspondence dated May 18, 2007, showing certain proposed improvements; and

WHEREAS, in accordance with the Joint Use Agreement, the City submitted to the School District a site plan in conjunction with correspondence dated May 25, 2007, showing certain proposed improvements; and

WHEREAS, after consultation between the City and the School District, a new site plan was prepared (the "Joint Site Plan"), which is attached hereto as Exhibit A, and incorporated herein by reference; and

WHEREAS, the City and the School District mutually desire to memorialize their respective agreements and understandings regarding the improvements to be made by each party, as well as their respective agreements and understanding of other related issues.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. The City acknowledges and agrees that it has been provided the notice required under Section 7.1 of the Ground Lease, dated effective June 1, 2002, between the City and the School District (the "Lease"), regarding the School District's construction of the improvements designated on the Joint Site Plan as "Classroom Wing" and "Parking Area B" (collectively, the "School Improvements"), and the School District is authorized under the terms of the Lease to construct the School Improvements provided such construction is in accordance with the other terms and conditions of the Lease.

2. The City consents to, and the School District shall be permitted to construct, provided it complies with Section 8.1(c) of the Joint Use Agreement, the improvements designated on the Joint Site Plan as follows:

- a. "Band Practice Area";
- b. "Music Wing Parking";
- c. "Music Wing";
- d. "Athletic Wing"; and
- e. "Athletic Area Parking" (the "Athletic Area Parking").

3. The School District consents to, and the City shall be permitted to construct, provided it complies with Section 8.1(c) of the Joint Use Agreement, improvements within the area designated on the Joint Site Plan as "Community Center Expansion Zone."

4. a. The School District does not consent to, and the City agrees that it shall not construct the improvement designated on the Joint Site Plan as "Community Center Future Pool Expansion Zone." However, the parties acknowledge that the City has an interest in an expanded competition pool, and the parties agree to further discuss the Community Center Future Pool Expansion Zone in the future.

b. The City does not consent to, and the School District agrees that it shall not construct additional parking in the area designated on the Joint Site Plan as "Area A." However, the parties acknowledge that the School District has an interest in additional parking in this area, and the parties agree to further discuss such parking in the future.

5. The City and the School District further agree that each party shall pay for its respective improvements pursuant to, with respect to the improvements described under Paragraph 1 hereof, the Lease or, with respect to the improvements described under Paragraphs 2 and 3 hereof, the Joint Use Agreement. The parties further agree to coordinate and cooperate regarding the improvements described in the preceding Paragraphs 2 and 3 to cause such improvements to be constructed in as cost effective and efficient a manner as is commercially reasonable. The City further agrees that it will, in good faith, support any applications made by the School District to applicable governmental authorities, to the extent that such applications are required, to obtain any necessary zoning and building approvals for the improvements to be constructed by the School District under Paragraphs 1 and 2, provided that the School District acknowledges that the City does not control such governmental authorities.

6. The City and the School District further agree to the following with respect to additional construction issues:

- a. The parties agree that the Athletic Area Parking shall be constructed by the School District in such a manner that the Athletic Area Parking does not encroach upon the Community Center Expansion Zone. The parties further agree that the Athletic Area Parking shall become a Shared Area under the Joint Use Agreement to the extent that the City's use shall not adversely impact the School District's use of the Athletic Area Parking. The parties further agree that the cost to construct the Athletic Area Parking shall be shared proportionately to the proposed shared use of each party. The parties recognize the importance of parking in this area. Therefore, if the improvements ultimately located in the Community Center Expansion Zone do not utilize the entire footprint, the City shall construct additional shared parking on the available space between the Athletic Area Parking constructed by the School District and the improvements ultimately constructed by the City in the Community Center Expansion Zone. This initial construction cost shall be borne by the City. Thereafter, the maintenance expenses of the entire Athletic Area Parking shall be shared proportionately to the proposed shared use of each party.
- b. The City agrees that the School District shall continue to be permitted to utilize additional parking at Corwin M. Nixon Park, provided that any revenues earned by the School District as a result of charging third parties for the use of such additional parking shall be shared by the School District and the City, equally.
- c. The City and the School District agree that the existing parking designated as Parking Area C on the Joint Site Plan shall be considered shared parking to the extent that the School District's use shall not adversely impact the City's existing and future use of said parking area. The School District agrees that Parking Area C shall not be utilized for student parking. The parties agree that the School District shall be responsible to monitor and control its use of the parking area in order to insure compliance with this Agreement.
- d. The City and the School District shall endeavor, in good faith, to proceed with the construction of their respective improvements as described hereunder such that construction occurs contemporaneously to the extent commercially reasonable; provided that, the parties recognize that the School District has certain contractual obligations to Middletown Regional Hospital ("MRH") which it must honor and other scheduling demands it must meet relative to the MRH Addition (as hereinafter defined) and its other improvements described hereunder. Therefore, the School District shall not be deemed in default or breach hereunder if it must proceed with

construction ahead of the City in order to satisfy such obligations or meet such scheduling demands.

7. The City and the School District further recognize and agree that the consents provided for in this Cooperative Agreement apply only to reasonably approximate footprints as identified on the Joint Site Plan.

8. The City and the School District further recognize and agree that the parties must still follow the terms and conditions of the Joint Use Agreement with respect to all other matters affecting the improvements described in Paragraphs 2 and 3 hereof.

9. The City and the School District further recognize that their respective improvements described hereunder may be made in conjunction with or on behalf of certain third party users, with the School District constructing the MRH Addition at Dwire Field for MRH and the City constructing a wellness facility in the Community Center Expansion Zone or otherwise in a location near the Community Center for or with an unknown third party. As such, the City and the School District agree that any future approvals that are required in connection with such improvements shall not be unreasonably withheld or conditioned or unduly delayed and that such approvals may not be withheld based solely on the ultimate use of the improved area or the identity of the third party user.

10. The City agrees that it has received and reviewed an initial concept plan (the "Concept Plan") for the "Proposed (2) Story MRH/Stadium Building" designated thereon (the "MRH Addition"), which is attached hereto as Exhibit B, to be located on School District property adjacent to the existing Dwire Field stadium (the "MRH Property"). Based on this review, the City and the School District make the following agreements, representations and warranties:

- a. The site of the MRH Addition is not subject to the terms and conditions of the Joint Use Agreement;
- b. The site of the MRH Addition is currently zoned Single Family Residential under the City of Mason Zoning Code;
- c. The School District shall submit an application requesting that certain School District property including the MRH Property be zoned Planned Unit Development ("PUD") under the City of Mason Zoning Code such that the medical, athletic, and educational uses contemplated to be made of the MRH Addition will be permitted under the City of Mason Zoning Code (the "MRH Addition PUD Application");
- d. The City agrees that the uses in the MRH Addition are compatible with the surrounding existing uses;

- e. City staff and administration will provide a favorable recommendation as to the proposed use of the MRH Addition to the Planning Commission and City Council in connection with the proposed MRH Addition PUD Application. The parties further agree to mutually cooperate such that the foregoing process can be completed in as expeditious a manner as is reasonably possible.
- f. The parties acknowledge and agree that the favorable recommendation contemplated herein applies only to the proposed uses of the MRH Addition. All other elements of the Concept Plan, including but not limited to, traffic, access alignment, and parking remain items that are subject to further discussion by the parties; provided that if the City cannot provide a positive recommendation with respect to any such element, the parties further agree to continue to work in a cooperative manner to produce a Concept Plan that satisfies such other elements.
- g. The parties acknowledge that the representations and warranties contained in this Cooperative Agreement shall not be considered any guarantee of future zoning approval; and
- h. As part of the MRH Addition, the City and the School District acknowledge that it will be necessary for the School District to extend water and sewer along a portion of the drive designated as "Park Drive" on the Concept Plan leading to Corwin M. Nixon Park and the MRH Property. The parties further acknowledge that certain additional improvements will be necessary for Park Drive to become dedicated as a public street. Therefore, the parties agree to cooperate and coordinate their efforts as they relate to the construction of any required and necessary improvements.

11. As promptly as is reasonably possible, the parties hereto shall enter into an amendment to the Joint Use Agreement memorializing the agreements regarding the Joint Use Agreement set forth in any relevant Paragraphs hereof.

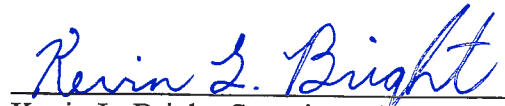
12. This Cooperative Agreement embodies the entire contract between the parties hereto relative to the subject matter hereof. Except as otherwise herein provided, no variations, modifications, changes, or amendments hereof shall be binding upon any party hereto unless in writing, executed by a duly authorized officer or agent of the particular party. The City and the School District have fully negotiated the provisions of this Cooperative Agreement and, notwithstanding any rule or principle of law or equity to the contrary, no provision of this Cooperative Agreement shall be construed in favor of or against either party by virtue of the authorship or purported authorship thereof.

IN WITNESS WHEREOF, this Cooperative Agreement is executed as of the date first written above.

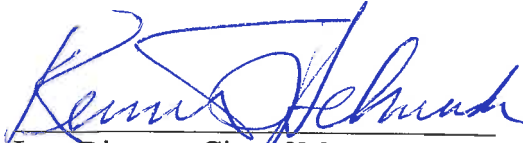
CITY OF MASON:


Eric Hansen, City Manager

MASON CITY SCHOOL DISTRICT:


Kevin L. Bright, Superintendent

Approved as to form by:


Law Director, City of Mason

STATE OF OHIO)
) ss:
COUNTY OF WARREN)

BEFORE ME, a Notary Public in and for said County and State, did personally appear the Mason City School District, by Kevin L. Bright, its Superintendent, who acknowledged to me that he did sign the foregoing instrument as such Superintendent, and that the same is his free act and deed, both individually and as such officer and the free act and deed of such school district.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at MASON OH this 23 day of JULY, 2007.


NOTARY PUBLIC


JOAN BERNARD
Notary Public, State of Ohio
My Commission Expires May 7, 2010

STATE OF OHIO)
) ss:
COUNTY OF WARREN)

BEFORE ME, a Notary Public in and for said County and State, did personally appear The City of Mason, by Eric Hansen, its City Manager, who acknowledged to me that he did sign the foregoing instrument as such City Manager, and that the same is his free act

and deed, both individually and as such officer and the free act and deed of such municipal corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at MASON, OH this 19 day of JULY, 2007.


NOTARY PUBLIC

324125.1

JOAN BERNARD
Notary Public, State of Ohio
My Commission Expires May 7, 2010

Exhibit B

Concept Plan Proposed MRH/ Stadium Building

7/16/07

GRAPHIC SCALE

(IN FEET)

Right of Way Line

Right of Way Line

P A R K D R I V E

Existing High School
Parking Lot

MRH Parking

New 6' fence w/ brick piers

New 6' fence w/ brick piers

New 6' fence w/ brick piers

New 6' fence w/ brick piers

Proposed Softball
Bleachers

Proposed Softball
Building

Proposed Softball
Bleachers

Proposed Bleachers
1,200 Seats

Existing Softball
Field

Existing
Football Field

Proposed (2) Story
MRH/ Stadium Building

Existing
Multi-Purpose
Field

Existing
Tennis Courts

Proposed
Tennis Courts

Proposed
Tennis
Shelter

Existing Middle School
Parking Lot

Existing Practice
Field

Proposed
Shot/ Discus

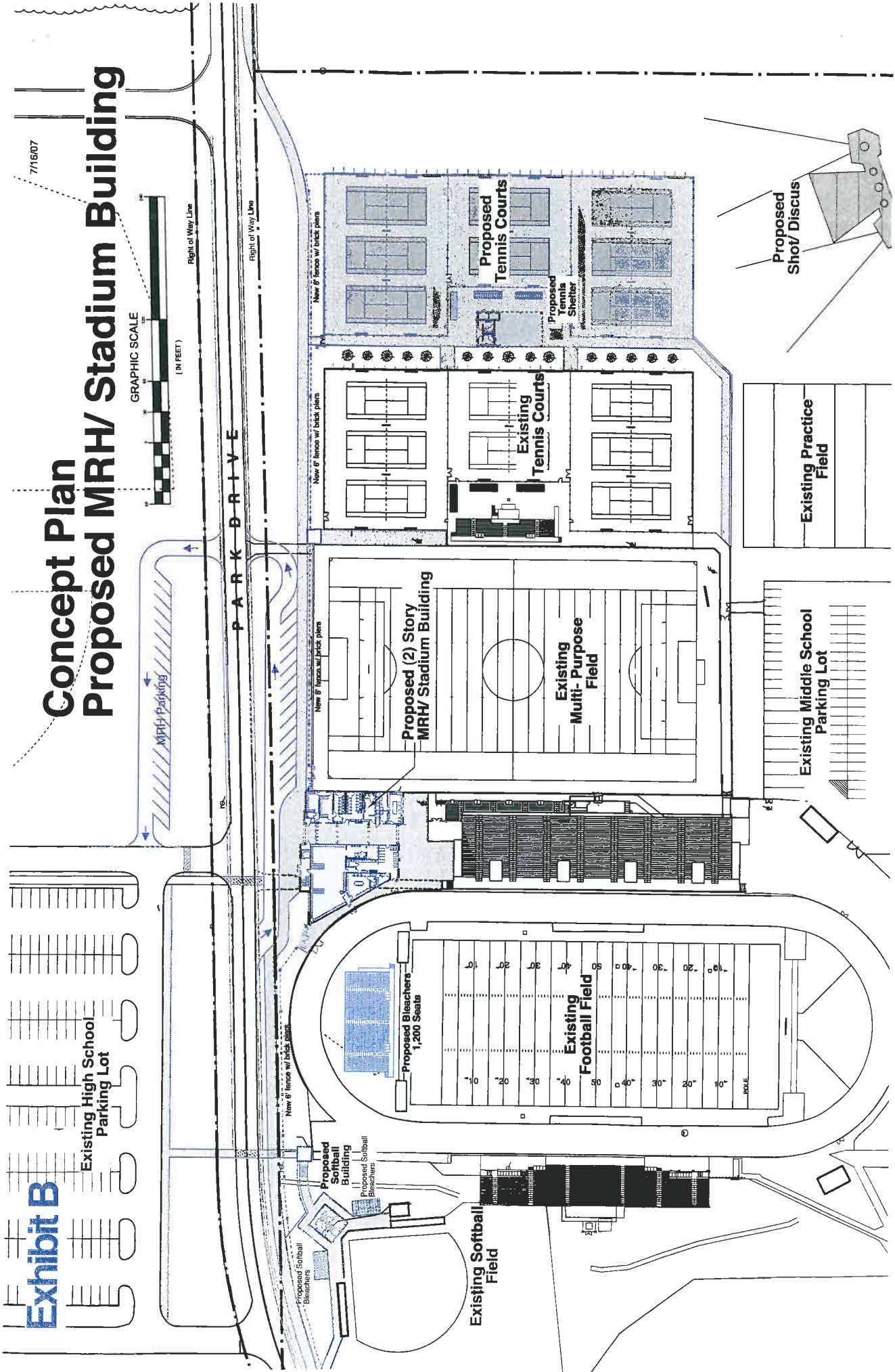


Exhibit A

Mason High School and Community Center Joint Use and Operation - Site Plan



7/16/07
Votaw
Waters
Waters
Consultants
Architects

