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Bill 2212



Book 2004 Page 974

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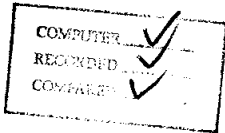
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AUD \$
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FILED NO. 460

BOOK 2004 PAGE 460

2004 JAN 30 AM 11:02

Carol "Cindy" Hol, Recorder
Madison County, Iowa



NICKI UTSLER
RECORDER
MADISON COUNTY, IOWA

Development and Funding Agreement

MTG. _____
REF. _____

This Development and Funding Agreement is entered into between the City of Van Meter (the "City") and the Van Meter Recreation Foundation (the "Foundation") effective this 12th day of January, 2004.

WHEREAS, the Van Meter Community School District (the "School") and the City have entered into a 28E Agreement for Local Option Sales Tax Revenue Sharing (the "28E Agreement") and per the 28E Agreement have previously agreed that revenues received by the School from the sales tax shall be distributed and utilized 75% by School and 25% by City.

WHEREAS, the City has agreed with the School in the 28E Agreement to receive, utilize and expend the sales tax revenues received from the School for development and improvement of the "youth athletic/recreation complex" and the City and School have subsequently entered into an Agreement Regarding the Scope and Definition of the Youth Athletic/Recreation Complex that defines the term "youth athletic/recreation complex" (the "Complex".)

WHEREAS, the Foundation has received the formal support of each the City and the School as the entity responsible for the identification and purchase of real estate, design and development of the Complex, for fund raising and arranging financing for the Complex; and

WHEREAS, Earlham Savings Bank (the "Lender") has issued a commitment letter to the Foundation setting forth the terms upon which the Lender will loan the funds to the Foundation necessary to develop the Complex; funds for repayment of which shall include the sales tax revenues received by City from the School. Further, as a prerequisite to the closing of a financing arrangement, the Lender requires an agreement between the City and the Foundation setting forth certain clarifying terms as to each the City's and the Foundation's rights and obligations as set forth below.

NOW, THEREFORE, the City and Foundation agree as follows:

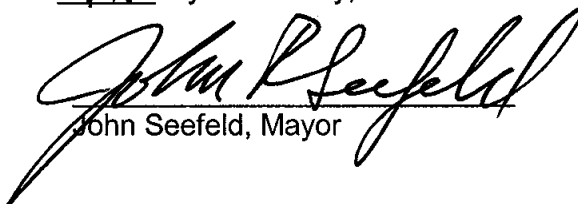
1. The City agrees to commit to the Foundation all of the funds that it receives from the School pursuant to the 28E Agreement required to build the Complex. The City and Foundation agree that any and all funds not required by the Foundation to build the Complex shall remain with the City for use by the City on other youth-related projects and activities. The City and the Foundation acknowledge that the City is providing such funds as reimbursement to the Foundation for the costs incurred by the Foundation to build the complex. The City agrees that as the City receives such funds from the School it shall timely remit such funds to the Foundation. The commitment of the City is subject to the following conditions:
 - a. The Foundation agrees to design and construct the Complex on the 37 acres, more or less, located west of Casey's, south of the Raccoon River

and north of the railroad tracks; however, the parties acknowledge after completion of Phase I and Phase II of the Complex that more real estate may need to be acquired to accommodate building Phase III of the Complex; and,


- b. The Foundation agrees to design and construct the Complex as provided for in the 28E Agreement; and,
 - c. The Foundation agrees to promptly and timely abide and comply with all terms that may be set forth by the Lender, including making timely payments of interest and principal, all as may be required by the Lender and set forth in the appropriate lending agreement, promissory note, mortgage and any other documents required by the Lender; and,
 - d. The Foundation agrees to diligently pursue the purchase of the real estate, design of the Complex (including cooperating with the City and with Casey's General Stores to facilitate the design and construction of a road north of Casey's that provides access to the Complex for both the City and the Foundation and the public), and development and construction of the Complex, all as described above.
 - e. The Foundation agrees that both the City and the School shall have the right to audit the use of public funds which are provided to the Foundation pursuant to this Agreement. The Foundation agrees to make available in Van Meter, Iowa its books and records to the City's or the School's authorized agents upon 30 days notice. The costs of such an audit shall be borne by the party requesting the audit unless a material misstatement has been made concerning the use of the public funds in which case the audit costs shall be paid by the Foundation.
2. The Foundation agrees to the above terms conditions, to the terms otherwise set forth in this Agreement, and further agrees to reasonably do all acts necessary to carry out the intent of this Agreement.
 3. The City and the Foundation agree to cooperate in facilitating the transition of each the maintenance and the ownership of the Complex after it is developed. The Parties acknowledge that for so long as the Foundation has an outstanding promissory note secured by a mortgage on the real estate upon which the Complex is built then legal title to the Complex cannot be transferred by the Foundation without the written consent of the City.
 4. In the event this Agreement is subject to comments or recommendations by the State Auditor's Office, the City and the Foundation agree to use their best efforts to accommodate the recommendations of the State Auditor's Office and agree to make reasonable modifications to the Agreement to accommodate such recommendations.
 5. The City and the Foundation agree that the Foundation is not the agent of the City nor is the City responsible for the conduct of the Foundation, except to the extent that the City may participate in the Oversight Committee contemplated by the 28E agreement between the City and the School and its amendments.

6. No modifications of this letter agreement or waiver of the terms or conditions hereof will be binding upon either party hereto, unless approved in writing by such party. This letter agreement will be governed by and construed in accordance with the laws of the State of Iowa
7. Except as the parties hereto otherwise agree in writing, this letter agreement shall terminate upon the mutual agreement of the Parties only with consent by the Lender for the Foundation or upon the payment in full of all indebtedness owing by the Foundation to the Lender.
8. **THE CITY AND THE FOUNDATION WAIVETHE RIGHT TO TRIAL BY A JURY OF ANY MATTERS ARISING OUT OF THIS AGREEMENT.**
9. The clerk of the City of Van Meter shall cause this Agreement to be recorded in the office of the Dallas County Recorder and filed with the Secretary of State.
10. The recitals set forth above are incorporated herein and become a part of this Agreement.
11. This Agreement is void if not approved as to form and content, in writing, as designated below by the School and on or before January 19, 2004.


Agreed to by the City of Van Meter on this 19 day of January, 2004.


 John Seefeld, Mayor

ATTEST:


 Sondra Sittner, City Clerk

Agreed to by the Van Meter Recreation Foundation on this 19th day of January, 2004.


 President, Van Meter Recreation Foundation

Approved solely as to form and content, but not as a binding party, by the Van Meter Community School District this 19 day of January, 2004.


 School Board President