

March 2014

JOINT POWERS AGREEMENT FOR DEVELOPMENT OF A MULTI-USE PARK

THIS AGREEMENT made this _____ day of _____, 2014, by and among the City of Lake Elmo,, Washington County, Minnesota (“Lake Elmo”) and Stillwater Area Public Schools, ISD 834 (“District”) (collectively the “Parties”).

WITNESSETH:

WHEREAS, the District and Lake Elmo have identified the mutual benefits of developing a multi-use public park located on approximately 3.7 acres in the northeast corner of the Oak-Land Junior High School campus wholly owned by the District noted on Exhibit A (“the Property”), the entire Property to be designated by and through this joint powers agreement as “Oak-Land Neighborhood Park;

WHEREAS, the Parties seek to develop the Property as a multi-use park consisting of playground structures, picnic areas (including tables), walking paths connecting to regional trails, conservation areas, bathrooms, and other park amenities meant to complement the recreational facilities found on the Oak-Land Junior High School campus;

WHEREAS, the location of this multi-use public park further affords a recreational benefit and increased quality of life for taxpayers of both Lake Elmo and the District in a quadrant of the community, which includes a large affordable housing complex currently not served by a park;

WHEREAS, in exchange for its the quiet enjoyment and use of the Property, Lake Elmo agrees to make available necessary parkland dedication funds to help in the purchase and development of infrastructure, athletic fields, sport courts and other equipment needed to support the multi-use park and publically-accessible recreational portions of Area A and Area B as depicted on Exhibit A.

WHEREAS, the Parties believe that co-development a multi-use park is a prudent use tax dollars for benefit of the public;

WHEREAS, Minnesota Statutes, Section 471.59 authorizes two or more governmental units by agreement of their governing bodies jointly and cooperatively to exercise any power common to the contracting parties or similar powers, including those which are the same except for the territorial limits within which they are exercised;

WHEREAS, cities are authorized to enter into development contracts under Minnesota Statutes, Section 462.358, Subd. 2(a); and,

WHEREAS, the parties hereto desire to set forth the respective rights and obligations of the parties to this joint powers agreement (“JPA”).

NOW THEREFORE, IT IS HEREBY AGREED by the Parties as follows:

ARTICLE I

Purpose and Term

1.1 The Parties agree to mutually carry out the actions necessary to fulfill the terms of this JPA to establish the Property as a multi-use park, known as Oak-Land Neighborhood Park and jointly used by Lake Elmo and the District as provided herein.

1.2 This JPA shall remain in place until terminated in accordance with the terms herein or as mutually agreed upon in writing by the Parties.

1.3 To the fullest extent permitted by law, the Parties intend to enter into this Agreement and operate under Minnesota Statutes, Section 471.59, authorizing the combination of powers of two or more governmental units. Unless amended in writing by the Parties, this JPA does not form a board within the meaning of Section 471.59 subd. 2.

Article II

Responsibilities of Lake Elmo

2.1. The Lake Elmo Planning Staff will work with the District to determine a legal description (“metes and bounds”) for the 3.7 acres that comprise the Property known as Oak-Land Neighborhood Park, located in the northeast quadrant of the Oak-Land Junior High campus and to be used for the purpose of a multi-use park. The legal description of the Property shall substantially conform to Exhibit A.

2.2. Lake Elmo shall promptly designate the Property and the recreational portions of Area A and Area B of the Oak-Land Junior High campus as “official City parkland” to allow the District to take full advantage of Minnesota Statutes Sections 466.03 Subd. 6(e) and 466.03 Subd. 23.

2.3. Lake Elmo shall appropriate parkland dedication funds for the purpose of purchasing infrastructure, playground equipment, athletic field equipment, sport courts, or other hard assets allowed by Minnesota Statutes 462.358 Subd. 2 (b) for use by the general public in the designated recreational areas of the Oak-Land Junior High Campus. Lake Elmo shall authorize an \$80,000.00 parkland dedication fund allocation for the cost of installing three (3) new publicly-accessible tennis courts in Area A of the Property. Said funds shall be disbursed upon execution of this Agreement.

2.4. Lake Elmo shall provide appropriate signage for the Property, designating the area as a joint development of Lake Elmo and the District, identified as a public park named “Oak-Land Neighborhood Park.” Lake Elmo agrees to be responsible for maintaining all park and picnic equipment, including structures, placed on the Property. Lake Elmo shall be responsible for providing all necessary safety and security measures for the Oak-Land Neighborhood Park

through its contract with Washington County Sheriff's Department or other equivalent law enforcement agreements Lake Elmo may enter into from time to time.

2.5. By September 1, 2014, Lake Elmo shall provide a park master plan that, subject to the District's approval, will provide for the installation of infrastructure, appropriate land use and utilization of the Oak-Land Neighborhood Park.

2.6. Notwithstanding anything to appear the contrary herein, Lake Elmo agrees that Area A and Area B of the Property will not function as a public park or be available for public use during regular school hours, as such school hours are published by the District to Lake Elmo and may be adjusted from time to time. Lake Elmo agrees that the District shall have priority use for all areas described in this JPA and Lake Elmo will not schedule any activities that may conflict with the District's priority use.

ARTICLE III

Responsibilities of the District

3.1. The District shall, at its expense, survey the Property and provide Lake Elmo with a property description ("metes and bounds") for the Oak-Land Neighborhood Park. The entire Park area shall be designated as a multi-use park.

3.2. The District shall grant Lake Elmo access to the Property for the purpose of preparing the site for the multi-use park. The District shall, in turn, grant Lake Elmo the right to clear the site of dead wood, brush, and debris; perform forestry duties to preserve trees and clear portions of the site for the development of the Oak Land Neighborhood Park.

3.3. By October 31, 2014, the District shall review and render its approval, qualified approval or rejection of Lake Elmo-proposed master plan for the installation of infrastructure, land use and utilization of Oak-Land Neighborhood Park

3.4. The District shall submit an invoice for the expansion of the current three (3) tennis courts on the Property, to be completed by the District in 2014 and not to exceed \$80,000.00. Lake Elmo agrees to pay the \$80,000.00 from parkland dedication funds within fifteen (15) days of Lake Elmo's receipt of the invoice.

3.5. The District agrees to provide general landscape maintenance of the Oak-Land Neighborhood Park and of the publically-accessible recreational portions of Area A and Area B. For purposes of this JPA, "general maintenance" shall be mowing, trimming of vegetation, and related grounds keeping of Areas A and B, but shall not include snowplowing or other snow removal. The District shall maintain all recreational equipment and fields in Area A and Area B.

ARTICLE IV

Default

- 4.1** In the event of any material breach of this Agreement that is not cured within (30) days of written notice of the breach describing the nature of the default and what action is necessary to cure the default, the non-defaulting Party may declare the other Party to be in default of this JPA.
- 4.2** The non-defaulting Party shall have all rights and remedies available under to it under law or in equity.
- 4.3** The failure of the non-defaulting Party to declare default or otherwise exercise its rights under this JPA shall not constitute a waiver of its rights to later declare default and exercise all rights and remedies available under section 3.2 above. .

ARTICLE V

Liabilities

- 5.1** Each Party retains the financial responsibility for damage to or loss of its own equipment that may occur in performing its duties under this JPA.
- 5.2** Each Party retains the financial responsibility for workers' compensation benefits for its own employees and for any injuries that occur to its employees in performing its duties under this JPA.
- 5.3** Each Party shall be liable for its own acts and omissions, including the acts and omissions of its officers, employees or agents and the results thereof to the extent authorized by law and shall not be responsible for the acts and omissions of the other Party, its officers, employees or agents. Each Party agrees to indemnify, defend and hold harmless the other Party, its officers, employees or agents, against any and all liability, loss, costs, damages, expenses, claims or actions, including attorneys' fees that the other Party may hereafter sustain, incur or be required to pay, arising out of any act or omission of the indemnifying Party, its officers, agents or employees, in the execution, performance, or failure to perform its obligations of this JPA. Nothing herein, however, shall be deemed a waiver by either Party of the limitations on liability set forth in Minnesota Statutes, chapter 466.

Article VI

Miscellaneous Provisions

- 6.1.1** This JPA shall be binding upon Lake Elmo and District and their respective successors. Neither Party shall be allowed to assigns this JPA without the express written consent of the other Party.
- 6.2** This JPA represents the entire agreement between Lake Elmo and District.
- 6.3** This JPA may be amended only by a written document duly authorized, executed and delivered by Lake Elmo and District.

IN WITNESS WHEREOF, the City of Lake Elmo and the Stillwater Area Public Schools ISD 834 have caused this joint powers agreement to be duly executed on the day and the year first above written.

CITY OF LAKE ELMO

By _____
Mike Pearson, Mayor

By _____
Adam Bell, City Clerk

Attest _____
Dean Zuleger, City Administrator

ISD 834 – STILLWATER AREA PUBLIC SCHOOLS

By _____
Its School Board Chair

By _____
Its School Board Clerk

Attest _____
Corey Lunn, Superintendent