



STAFF REPORT

DATE: October 17, 2023

CONSENT

AGENDA ITEM: Settlement Agreement between ISD 834 Stillwater Public Schools, EN Properties LLC and E&E Properties LLC and City of Lake Elmo

TO: Mayor and City Council

SUBMITTED BY: Kristina Handt, City Administrator

BACKGROUND:

Mayor Cadenhead, Council Member McGinn and I attended a mediation session regarding the lawsuit related to the school bus garage along with representatives from EN Properties and Stillwater School District. We reached a tentative settlement agreement that requires approval by the city council to ratify.

ISSUE BEFORE COUNCIL:

Should the Council approve the settlement agreement with EN Properties LLC and Stillwater School District?

PROPOSAL:

The final agreement is still being drafted in official form by legal counsel. It will be provided by the time of the council meeting on October 17th. I've included a copy of the preliminary settlement agreement in your packet for now.

The key points for the city are an agreement to pay EN Properties LLC \$75,000, which represents a 50% refund of the fee paid for non-tax paying parcels proposed as part of the Four Corners development in 2018. Only one of the two parcels has been developed by a tax exempt entity. Payment must be made within 30 days of approval of the agreement by the City Council. This settlement agreement releases all claims and includes a non-disparagement clause and an agreement to operate in good faith and without retaliation in future dealings.

OPTIONS:

- 1) Approve settlement agreement
- 2) Amend and then approve the settlement agreement
- 3) Do not approve the settlement agreement

RECOMMENDATION:

If removed from the consent agenda:

Motion to approve the Mediated Settlement Agreement and Release between ISD 834 Stillwater Public School, EN Properties LLC and E&E Properties LLC, and the City of Lake Elmo."

ATTACHMENTS:

- Preliminary Settlement Agreement (final to be provided by the time of the meeting)

CONDITIONAL MEDIATED SETTLEMENT AGREEMENT AND RELEASE

THIS CONDITIONAL MEDIATED SETTLEMENT AGREEMENT AND RELEASE (the “Agreement”) is fully effective as of October 11, 2023, and is entered into by Plaintiff ISD 834 Stillwater Public Schools (the “District”), EN Properties, LLC and E&E Properties, LLC (“EN”) and the City of Lake Elmo (the “City”).

The District, EN and City (collectively referred to as the “Parties”) are parties to a lawsuit pending in Washington County District Court, File No. 82-CV-20-1422 (the “Action”). The Parties now desire to settle all claims which have been asserted or which could have been asserted in the Action on the following Terms:

1. EN shall make a payment in the amount of \$400,000 to the District.
2. The City shall make a Payment of \$75,000 to EN. The City’s consideration herein represents a 50% refund of EN Properties, Inc.’s cash contribution for lost tax revenue for the unrealized Four Corners, 2nd Addition Development.
3. The District and EN each accept payments referenced above and the release of claims as set forth below in full satisfaction of any claims that were made or could have been made in the pending Action.
4. The District, EN and City agree to release all claims, third party claims or counterclaims that were made or could have been made by or between the Parties in the Action or that arise out of the subject matter of the Action, including the future consequences of such claims, whether known or unknown (the “Released Claims”).
5. Payments made or received are made or received without any admission of liability or fault.
6. Parties agree to cooperate to prepare and finalize all documents required to implement the terms of this Mediated Settlement Agreement, including a formal settlement agreement and release and a stipulation of dismissal with prejudice and on the merits.

7. This Agreement is conditioned upon formal approval by the District's Board and by the City's council. The undersigned representatives of the District and City each agree to recommend the ratification and approval of this Agreement and agree they will advocate for its approval and believe it will be approved.
8. Payments will be due within 30 days from the date this mediated settlement agreement is approved by the City and District. The City will present the final settlement agreement to the City Council on October 17, 2023. The District will present the final settlement agreement to District's school Board on October 24, 2023.
9. The Parties agree that any final settlement agreement will include a mutual non-disparagement clause.
10. The Parties agree that they will operate in good faith and without retaliation in any future dealings.
11. Counsel agree to promptly file a stipulation of dismissal with prejudice and on the merits following receipt of payment of the settlement amount.
12. All parties will bear their own attorney fees and costs.
13. The terms of this Agreement are binding and enforceable subject only to the requirement that the City and District secure final ratification of the Agreement. The Mediator has advised the parties that it offers no legal advice, that signing a mediated settlement agreement may adversely affect the parties' legal rights; and parties should consult an attorney before signing a mediated settlement agreement if they are uncertain about their rights.

14. The undersigned have authority to enter into this agreement.

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**INDEPENDENT SCHOOL DISTRICT 834
STILLWATER AREA PUBLIC SCHOOLS**

Dated: October 11, 2023

By 

Its superintendent
Michael Funk

Dated: October 11, 2023

Dated: October 11, 2023

By _____

Its _____

By Its Attorneys



David Sienko
Levander, Gillen & Miller
633 Concord Street S., Suite 400
South St. Paul, MN 55075

ISD 834 v. EN Properties, LLC et al
Mediated Settlement Agreement and Release

EN PROPERTIES, LLC
E&E PROPERTIES, LLC

Dated: October 11, 2023

EN By *Tony Emerson*
Its *President*

Dated: October 11, 2023

E&E By *Tony Emerson*
Its *President*

Dated: October 11, 2023

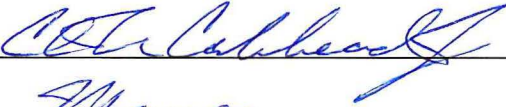
By Its Attorneys

Tamara O'Neill Moreland
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Mediated Settlement Agreement and Release


CITY OF LAKE ELMO

Dated: October 11, 2023

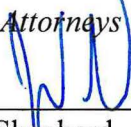
By 
Its Mayor

Dated: October 11, 2023

Dated: October 11, 2023

By 
Its City Administrator

By Its Attorneys


Jared Shepherd
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