

**CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA**

RESOLUTION NO. 2011-007A

**A RESOLUTION APPROVING A JOINT POWERS AGREEMENT
WITH ISD 834 FOR THE LOCATION OF AN EARLY CHILDHOOD
AND FAMILY CENTER IN THE CITY OF LAKE ELMO**

WHEREAS, Independent School District No. 834 has identified the need to construct an early childhood education facility (the "Facility") within its boundaries to serve the population within the District; and

WHEREAS, the District has identified certain real property located in the City of Lake Elmo as potential site for the Facility; and,

WHEREAS, the City is willing to extend its municipal sanitary sewer and water systems to serve the Property, both as part of its long-term community planning and as an incentive to the District to construct an early childhood education facility (the "Facility") on the Property; and

WHEREAS, the City has negotiated an option agreement with respect to the Property and, subject to the terms set forth below, is willing to assign its option to purchase the Property to the District, at a price of \$74,500 per acre; and

WHEREAS, the parties desire to enter into a Joint Powers Agreement to provide for the extension of municipal sanitary sewer and water system to the Property and obtaining pre-purchase development approvals and costs for the Property; and

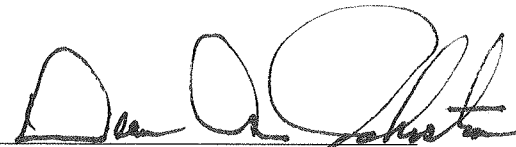
WHEREAS, Minnesota Statutes Section 471.59 authorizes two (2) or more governmental units by agreement of their governing bodies jointly and cooperatively to exercise any power common to the contacting parties or any similar powers, including those which are the same except for the territorial limits within which they are exercised.

BE IT, THEREFORE, RESOLVED, that the City Council of the City of Lake Elmo does hereby approve a Joint Powers Agreement with Independent School District 834, substantially in the form attached herein, for the location of an Early Childhood and Family Center in the City of Lake Elmo.


BE IT FURTHER RESOLVED that the Joint Powers Agreement is subject to such non-substantive changes and/or other adjustments, to be made by the City Administrator and City Attorney, as necessary to effect the intent of the City Council under this agreement.

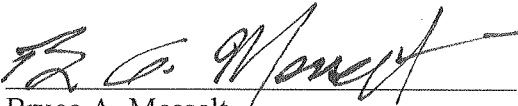
BE IT FURTHER RESOLVED that the City Administrator and Mayor are hereby directed to immediately execute such Joint Powers Agreement for, by and on behalf of the City of Lake Elmo, Minnesota.

Date: February 17, 2011 CITY OF LAKE ELMO

By: 
Dean A. Johnston
Mayor

ATTEST:


Sharon Lumby
City Clerk


Bruce A. Messelt
City Administrator

**JOINT POWERS AGREEMENT AND
DEVELOPMENT AGREEMENT**

(Draft subject to further review by ISD 834 and City of Lake Elmo)

THIS AGREEMENT made this 17th day of February, 2011, by and among the City of Lake Elmo, Washington County, Minnesota (“Lake Elmo”) and Stillwater Area Public Schools, ISD 834 (“District”).

WITNESSETH:

WHEREAS, the District has identified the need to construct an early childhood education facility (the “Facility”) within its boundaries to serve the population within the District; and

WHEREAS, the District has identified certain real property located in the City of Lake Elmo as potential site for the Facility, which property is legally described on the attached Exhibit A (“the Property”); and,

WHEREAS, the Property is owned by a third party and currently is not served by municipal sanitary sewer and water; and,

WHEREAS, the City is willing to extend its municipal sanitary sewer and water systems to serve the Property, both as part of its long-term community planning and as an incentive to the District to construct an early childhood education facility (the “Facility”) on the Property; and

WHEREAS, the City has negotiated an option agreement with respect to the Property and, subject to the terms set forth below, is willing to assign its option to purchase the Property to the District, at a price of \$74,500 per acre; and

WHEREAS, the parties desire to enter into a Joint Powers Agreement to provide for the extension of municipal sanitary sewer and water system to the Property and obtaining pre-purchase development approvals and costs for the Property; and

WHEREAS, the preliminary schedule contemplated by the parties for the extension of utilities, the purchase of the Property, the construction of the Facility and other activities contemplated by this Agreement (the "Project") are set forth on the attached Exhibit B; and

WHEREAS, subject to the terms set forth in this Joint Powers Agreement, the District and the City have a mutual understanding defining the public benefit of the construction, operation and use of said Facility on the Property (Exhibit C); and

WHEREAS, Minnesota Statutes Section 471.59 authorizes two (2) or more governmental units by agreement of their governing bodies jointly and cooperatively to exercise any power common to the contacting parties or any similar powers, including those which are the same except for the territorial limits within which they are exercised; and,

WHEREAS, cities are authorized to enter into development contracts as contemplated in 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 agreement.

NOW THEREFORE, IT IS HEREBY AGREED by and among the parties as follows:

ARTICLE I

Responsibilities of City

A. The City and District will cooperate to reach an agreement on the site location of the Facility by March 4, 2011.

B. After execution of this Agreement by both parties, and no later than March 15, 2011, the City will assign its option to purchase the Property at a price of \$74,500 per acre, with a closing no later than May 31, 2011, subject to those contingencies as set forth in the option agreement.

C. Promptly after the City has assigned or exercised its option, the City will arrange to conduct a site inspection of the Property at its cost, including any additional environmental testing determined as mutually necessary for construction of proposed Facility. The City will promptly provide the District with copies of all written reports that result from the inspection, including test results. The City may terminate this Agreement by written notice to District if, based on the results of the investigation and in the reasonable exercise of its discretion, the City determines that the Project is not feasible or practical. The City's notice of termination must be given in the manner provided in ARTICLE III.

D. The City will expedite consideration of all necessary City development approvals that are required for the development of the Property with the Facility, consistent with the Project schedule set forth in Exhibit B.

E. At its cost, the City will prepare all necessary plans and specifications for the construction of the sanitary sewer system to service the Property. Bids for such specifications and construction will be issued by the City no later than April 30, 2011. The City will award a contract for the construction of the sanitary sewer and water system in the manner required by law. All work to be done constructing and installing the sanitary sewer and water system shall be done subject to the approval of the City Engineer in accordance with City standards and requirements but shall be sufficient to fully serve the Property and the Facility thereon. The contract letting process and the construction of the improvements must be done in a timely fashion in accordance with the Project Schedule attached as Exhibit B.

F. The City shall hold harmless and defend the District from any and all claims made by anyone for any defects or damages of any kind caused by the installation and/or construction of the sanitary sewer system.

G. At its cost, the City shall obtain any and all easements necessary to extend the sanitary sewer system to the Property, including any easements on the Property that are required prior to the City's purchase of the Property. After the purchase of the Property, the City may establish such easements as the City may require, subject to mutual agreement of the District.

H. The City agrees to use best efforts to complete the construction of the sanitary sewer system improvements by March 1, 2012. If by January 1, 2012, the City determines that the sanitary sewer and water improvements will not be ready for use by the District as of March 1, 2012, then at no expense to the District, the City will provide the Property with temporary sanitary sewer and water service from March 1, 2012 until such time as the permanent sanitary sewer and water improvements are connected and available for use at the Property.

I. The City agrees that the District, in consideration of the public purpose benefits defined in Exhibit C, will NOT be charged the following development fees at the rates now in effect in the City, as set forth below, for the first 50 REC units, as calculated by the Metropolitan Council:

| | |
|---|------------------------------|
| City of Lake Elmo Sewer Availability Charge (SAC) | \$ <u>3,500 per SAC Unit</u> |
| City of Lake Elmo Water Availability Charge (WAC) | \$ <u>3,900 per REC Unit</u> |

The City will, however, charge Metropolitan Council sewer availability and water availability charges (SAC and WAC) at the rates in effect at the time of connection. The City and the District mutually agree to utilize the REC/SAC unit for this development, as determined by the Metropolitan Council. The City will consider additional related development fee waivers, if statutorily authorized, up to the equivalent value of the purchase of 5.01 Acres at \$74,500 per acre.

J. Concurrent with its performance of other obligations under this ARTICLE I, the City agrees to and acknowledges the public benefit derived from construction, operation and use of the Property, as delineated in Exhibit C, which defines the City's right and intent to utilize portions of the Facility and property for priority, but secondary, use of portions of the Facility and property, subject to District discretion and reasonable operation and management considerations.

K. Should all such contingencies have been met and the City fails to perform under this Agreement after the Closing Date, the City shall immediately reimburse the District, upon written request and documentation by the District, for costs associated with the District's performance of obligations delineated in this Agreement.

ARTICLE II

Responsibilities of the District

A. The District and the City will cooperate to reach an agreement on the site location of the Facility by March 4, 2011.

B. The District will promptly review all reports and other information provided by the City concerning the results of the environmental and geotechnical investigation of the Property. The District may terminate this Agreement by written notice to City if, based on the results of the investigation and in the reasonable exercise of its discretion, the District determines that the Project is not feasible or practical, or if the District is not able to reach a mutual agreement with the City concerning the allocation of remediation costs, if any. The District's notice of termination must be given in the manner provided in ARTICLE III.

C. The District will use its best efforts to obtain all necessary governmental approvals that are required for the development of the Property with the Facility, consistent with the Project schedule set forth in Exhibit B and in accordance with the City of Lake Elmo's ordinances, policies, procedures and fee schedule.

D. The District will cooperate in good faith with the City concerning the location of public easements that the City may acquire, at no additional cost, over portions of the Property in furtherance of the Project. The District will permit the installation within the easement areas of improvements for the sanitary sewer and water system, as well as public walkways and parking.

K. E. Concurrent with its performance of other obligations under this ARTICLE II, the District agrees to and acknowledges the public benefit derived from construction, operation and use of the Property, as delineated in Exhibit C, which defines the City's right and intent to utilize portions of the Facility and property for priority, but secondary, use of portions of the Facility and property, subject to District discretion and reasonable operation and management considerations.

F. The District agrees to commence construction of the Facility on or about June 3, 2011 and to use its best efforts to complete construction in accordance with Project schedule on the attached Exhibit B. The District will construct and own the Facility consistent with the final lease terms.

G. At the time the Property is connected to the City sanitary sewer and/or water system, the District agrees to pay all applicable sewer and water availability, connection, and area charges, at the rates as set forth in Article I for any and all REC units above 50, as determined by the Metropolitan Council.

H. The obligations of the District under this Agreement are contingent upon the following:

1. On or before April 15, 2011 (the "Contingency Date"), District shall have determined, in its sole and absolute discretion, that it is satisfied with the results of the environmental reports and recommendations obtained in accordance with Article I, paragraph C.

2. As of May 31, 2011 or such other date as mutually agreed by the parties as the date of closing (the "Closing Date"), City and District shall have complied with the terms and conditions of this Agreement and title to the Property shall be free and clear of all encumbrances, except the public easements as contemplated by this Agreement.

3. As of the Contingency Date, the District shall have obtained a positive review and comment from the Minnesota Department of Education concerning the Facility.

4. As of the Contingency Date, District shall have obtained a zoning designation that allows for the District to use the property for the purpose the District has intended.

5. As of the Contingency Date, District shall have obtained all approvals, licenses, and permits from the appropriate governmental authorities having jurisdiction over the Property deemed necessary by District to permit District's intended use and operation of the property.

6. As of the Closing Date, District shall have obtained financing for the construction of the Facility to be located on the Property.

These contingencies are for the sole benefit of the District and may be waived or exercised in its sole discretion.

I. Should all such contingencies have been met and the District fails to perform under this Agreement after the Closing Date, the District shall immediately reimburse the City, upon written request and documentation by the City, for all option costs associated with the City's performance of obligations delineated in this Agreement.

ARTICLE III

Miscellaneous Provisions

A. Except as otherwise, the District is responsible to pay all costs for the design and construction of the Facility, including but not limited to building permit fees.

B. The City shall be responsible for all costs incurred in the design, engineering and construction of the sanitary sewer system improvements contemplated by this Agreement. The District's sole financial responsibility for such improvements shall be the payment of those charges as provided in Article I, paragraphs B and I, and Article III, paragraph A.

C. The City and District understand that the primary and predominant purpose of the Facility and Property is for programs and services that support and advance, directly or indirectly, early childhood educational programming and activities. The City and District shall jointly determine location of public sidewalks, pathways, promenades, and public parking.

D. To the greatest extent practicable, the District and the City agreed to work together to effect positive community and local business opportunities and activities.

E. Notices required to be given under this Agreement shall be given to the following official recipients:

For the City:

City Administrator

City of Lake Elmo, MN

3800 Laverne Ave N

Lake Elmo, MN 55042

For the District:

Superintendent

Stillwater Area Public Schools

1875 Greeley Street S.

Stillwater, MN 55082

E. This Agreement shall not be recorded in the land records, but the final lease agreement between the parties will be recorded.

F. If any of timelines are not obtained as specified within ARTICLE I or ARTICLE II, this Agreement will be determined to be null and void unless a subsequent agreement is mutually agreed upon.

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

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CITY OF LAKE ELMO

By 
Dean Johnston, Mayor

By 
Sharon Lumby, City Clerk

Attest 
Bruce Messelt, City Administrator

STILLWATER AREA PUBLIC SCHOOLS, ISD 834

By: _____

Its: School Board Chair

By: _____

Its: School Board Clerk

EXHIBIT A

Legal Description of Property

All of the following real property, or any portion thereof: Lot 1, Block 2 of Brookman 3rd Addition; Lot 2, Block 2 of Brookman 3rd Addition; Lot 3, Block 2 of Brookman 3rd Addition; all in the County of Washington and State of Minnesota.

EXHIBIT B

Project Schedule

| | |
|-------------------|---|
| February 17, 2011 | City approval of Option Agreement on Property and this Agreement |
| February 24, 2011 | District approval of this Agreement |
| March 4, 2011 | Parties agree on site location for Facility |
| March 8, 2011 | City Council authorizes and directs staff to assign option to purchase to District |
| March 15, 2011 | District executes purchase option |
| March 15, 2011 | City Council consideration of zoning approval |
| April 1, 2011 | Sewer and water improvement Plans and Specifications is advertised for bids |
| April 15, 2011 | Contingency Date for District determination of satisfaction with the results of the environmental reports and recommendations |
| April 30, 2011 | Award Contract for Construction for Sanitary Sewer System |
| May 31, 2011 | District closes on purchase of Property |
| June 3, 2011 | District commences construction on Facility |
| January 1, 2012 | Sewer and water improvements substantially complete |
| March 1, 2012 | Sewer and water improvements completed |
| March 1, 2012 | Construction of Facility substantially complete |

EXHIBIT C

The City and District understand that the primary and predominant purpose of the Facility and Property is for programs and services that support and advance, directly or indirectly, early childhood educational programming and activities.

In consideration for the provisions provided within this Agreement, the City and District acknowledge and advance the following public purposes and benefits derived from construction and operation of this facility within the City of Lake Elmo:

- Immediate economic development benefits from acquisition and construction of said property and facility, including local jobs and construction activity and direct and indirect economic derivative benefits for local businesses;
- Long-term economic development benefits derived from operation and maintenance of said property and facility, including ongoing employment, programming, and programming-support related activities;
- Ability and intent of the City to utilize portions of the Facility and property, internal and external, for priority, but secondary, access and use of public portions of the facility and property, not in conflict with the primary programming and use, and subject to reasonable District discretion, operation and management considerations.
- Ability and intent of the City to utilize portions of the property for priority, but secondary in use, not in conflict with the primary programming and use, and subject to reasonable District discretion, operation and management

considerations, for additional public parking, community pathways, promenades and gathering space.

- Potential organized programming provided by the City for the public benefit of its residents, not in conflict with the primary programming and use, and subject to reasonable District discretion, operation and management considerations.
- Other mutually-advantageous considerations as may be determined and effected and determination of reasonable District discretion, operation and management considerations distinct from those determined for other government, public, not-for-profit, and for-profit groups or organizations.

The City and District find such public purposes and uses both reasonable and commensurate for the mutual benefits derived from this Agreement.