

March 2014

**JOINT POWERS AGREEMENT AND DEVELOPMENT AGREEMENT FOR ESTABLISHMENT
OF _____**

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").

WITNESSETH:

WHEREAS, the District and Lake Elmo have identified the opportunity to partner in the development of a multi-use public park located on approximately 3.7 acres in the northeast corner of the Oakland Junior High School campus wholly owned by the District noted on Exhibit A ("the Property");

WHEREAS, a multi-use park may consist of a playground structures, picnic areas (including tables), walking paths connecting to regional trails, conservation areas, bathrooms, and other park amenities meant to compliment the recreational and athletic nature of the Oakland Junior High School campus;

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

WHEREAS, in exchange for the quiet enjoyment and use of the 3.7 acres of land, Lake Elmo agrees to make available appropriate 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 noted on Exhibit A.

WHEREAS, the partnering of Lake Elmo and the District to co-develop a multi-use park is a prudent use and an excellent example of utilizing tax dollars and real property;

WHEREAS, Minnesota State Statutes 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 contracting parties or similar powers, including those which are the same except for the territorial limits within which they are exercised; and,

WHEREAS, cities 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 Lake Elmo

1.1. Lake Elmo and the District will cooperate to reach **an operational agreement** which shall be reduced to writing on establishment of a multi-use park on the Oakland Junior High campus property by April 15, 2014.

1.2. The Lake Elmo Planning Staff will work with the District to determine a legal property description ("metes and bounds") of the approximately 3.7 acres (guided by Exhibit A) in the northeast quadrant of the Oakland Junior High campus for the purpose of a multi-use park.

1.3. After the execution of this Agreement by both parties, Lake Elmo will formally designate the assigned multi-use park property and the recreational portions of Area A and Area B of the Oakland Junior High campus as "official City parkland" to allow the District to take full advantage of Minnesota Statutes Section 466.03 Subd. 6(e) providing recreational immunity from liability; and in conjunction with Minnesota Statutes Section 466.03 Subd. 23.

1.4. After the execution of this Agreement, Lake Elmo Parks Commission will make available, appropriate parkland dedication funds for the purpose of purchasing infrastructure, playground equipment, athletic field / 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 Oakland Junior High Campus. The Park Commission will authorize an \$80,000 parkland dedication fund allocation for the installation of (3) new publically-accessible tennis courts in Area A of the Property to be disbursed at the execution of this Agreement.

1.5. Lake Elmo will provide appropriate signage for the approximate 3.7 acre multi-use park designating the area as a joint venture between Lake Elmo and the District. **The park shall be named "Oakland Neighborhood Park". Lake Elmo agrees to maintain all park & picnic equipment, including structures, placed in the 3.7 acre multi-use park area.**

1.6. Lake Elmo Park Commission will provide a park master plan for the District's approval on the installation of infrastructure, land use and practical utilization of "Oakland Neighborhood Park" by September 1, 2014.

1.7 Lake Elmo recognizes that Area A and Area B will not function as a public park or be available for public use during regular school hours. Lake Elmo recognizes that priority use for all areas described in this Agreement belongs to the District and will not schedule any activities that may conflict with the priority use.

Article II

Responsibilities of the District

2.1. The District and Lake Elmo will cooperate to reach an **operational agreement** on establishment of a multi-use park on the Oakland Junior High campus property by April 15, 2014.

2.2. The District shall, at their expense, survey the approximate 3.7 acres of Property located in the northeast quadrant of the Oakland Junior High campus and provide Lake Elmo with a property description ("metes and bounds") for the area to be assigned the purpose of a multi-use park.

2.2. After the execution of this Agreement, the District shall grant Lake Elmo access to the approximate 3.7 acres assigned for the purpose of preparing the site for the eventual use as a multi-use park. The District will grant Lake Elmo the right to clear the site of dead wood, brush, debris; perform forestry duties to preserve trees and clear portions of the site for the installation of approved site & use plan for Oakland Neighborhood Park.

2.4. The District agrees to review and approve a park master plan for the installation of infrastructure, land use and practical utilization of Oakland Neighborhood Park by October 31, 2014

2.5. After the execution of this Agreement, the District shall submit an invoice for the current 2014 tennis court expansion of 3 courts not to exceed \$80,000 to be paid net 15 days by Lake Elmo from parkland dedication funds.

2.6. The District agrees to provide maintenance of the general landscape approximate 3.7 acre Oakland Neighborhood Park and the publically-accessible recreational portions of Area A and Area B that would include mowing, trimming, and other groundskeeping functions (see Exhibit A) in exchange for annual consideration of City parkland dedication funds. The District will maintain all recreational equipment and fields in Area A and Area B.

2.7. The District will submit parkland dedication fund requests for infrastructure improvements for the approximate 3.7 acre park and publically-accessible recreational portions of the Oakland Junior High (unclear) by July 1st of each year for consideration by the Lake Elmo Park Commission for inclusion in the following year's capital improvement budget.

ARTICLE III

Default

3.1 Default. In event of any 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, if any is necessary to cure the breach, the non-defaulting party may declare this Agreement to be in default.

3.2 Rights and Remedies. The rights and remedies available under this Agreement shall be in addition to the rights and remedies available by law.

3.3 Waiver. No action of failure to act any party to this Agreement shall constitute a waiver of a right or duty accorded under this Agreement.

ARTICLE 4

Miscellaneous Provisions

4.1 Benefit and Entire Agreement. This Agreement shall inure to the benefit of and shall be binding upon Lake Elmo and District and their respective successors and

assigns. This Agreement represents the entire agreement between Lake Elmo and District.

4.2 Amendment and Modification. This Agreement may be amended or any of its terms modified only by a written document duly authorized, executed and delivered by Lake Elmo and District.

4.3 Further Assurance and Corrective Instruments. Lake Elmo and District each agree, upon written request of the other, to execute and deliver instruments and documents of further assurance as may be reasonably required to carry out the intention of this Agreement.

4.4 Counterparts. This Agreement may be executed in several, each of which shall constitute one and the same instrument.

4.5 Governing Law. This Agreement shall be governed by the laws of the State of MINNESOTA.

4.6 Notices. All notices, demands or other communication under this Agreement shall be in writing and shall be deemed to have been duly served when delivered to the person for which it was intended, or when mailed, first-class mail, postage prepaid, as indicated below:

If to Lake Elmo: City of Lake Elmo
City Administrator
3800 Laverne Avenue North
Lake Elmo, MN 55042

If to District: Stillwater Area Public Schools, ISD 834
Superintendent
1875 Greely Street S.
Stillwater, MN 44082

4.7 Severability: The invalidity or unenforceability of any provision of this Agreement, in no way, affect the validity or enforceability of any other provision of this Agreement, all of which shall remain in full force and effect.

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, the City of Lake Elmo and the Stillwater Area Public Schools ISD 834 have caused this 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