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City of Lake Elmo
Special City Council Meeting
3800 Laverne Avenue North
Lake Elmo, MN 55042

Thursday, February 17, 2011

4:30 p.m. – 6:30 p.m. (?)

Proposed Agenda

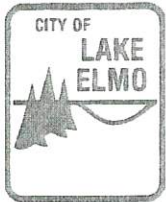
1. Consideration of Resolution No. 2011-007: Regarding a proposed Joint Powers Agreement (JPA) with ISD 834 for locating an Early Childhood Education Family Center in Lake Elmo.
2. Consideration of Resolution No. 2011-008: Regarding a proposed Purchase Option (PO) for property owned by Lake Elmo Business Park Company for locating an Early Childhood Education Family Center in Lake Elmo.

3. Council Member Updates

Council Member Emmons – Gateway Corridor Commission

4. City Administrator Updates

A social gathering may or may not be held at the Lake Elmo Inn following the meeting.



MAYOR & COUNCIL COMMUNICATION

DATE: 2/17/2011
SPECIAL
ITEM #: 1
ACTION *Resolution 2011-007*

AGENDA ITEM: Consideration of Resolution No. 2011-007: Regarding a proposed Joint Powers Agreement (JPA) with ISD 834 for locating an Early Childhood Education Family Center in Lake Elmo.

SUBMITTED BY: May & City Council Request

THROUGH: Bruce A. Messelt, City Administrator *BAW*

REVIEWED BY: Dave Snyder, City Attorney

SUMMARY AND ACTION REQUESTED: The City Council is respectfully requested to consider Resolution 2011-007 relating to a proposed Joint Powers Agreement designed to facilitate location of the Stillwater Area School District's Early Childhood & Family Center in Lake Elmo.

BACKGROUND INFORMATION & STAFF REPORT: In August 2010, on November 3rd, 2010, and on February 1st, 2011, the City Council directed the City Administrator to actively seek to formulate a proposal to potentially locate the Stillwater Area School District's Early Childhood & Family Center in Lake Elmo.

Since that time, significant effort and conversation has taken place regarding this potentiality, leading to recent efforts to craft a specific proposal for City and School District consideration. Tonight's presentation will serve as a final consideration by the City Council of the proposed Joint Powers Agreement (under the current schedule).

RECOMMENDATION: It is respectfully recommended that the City Council receive a brief presentation by the City Administrator and Attorney and then consider Resolution 2011-007 relating to a proposed Joint Powers Agreement designed to facilitate location of the Stillwater Area School District's Early Childhood & Family Center in Lake Elmo.

ATTACHMENTS:

1. Resolution No. 2011-007A and Proposed JPA
2. Resolution No. 2011-007B and proposed JPA

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item City Administrator
- Report/Presentation..... City Administrator
- Questions from Council Mayor Facilitates
- Public Input, if Appropriate Mayor Facilitates
- Motion and Discussion Mayor & Council
- Council Action Mayor Facilitates

**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.*

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: _____, 2010 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 ____ day of _____, 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, or purchase and convey the Property to the District, at a price of \$74,500 per acre; and

WHEREAS, subject to the terms set forth below, the District and the City desire to enter into a Memorandum of Understanding defining the public benefit of the construction, operation and use of said Facility on the Property; 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, 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>
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City of Lake Elmo Water Availability Charge (WAC)	\$ <u>3,900 per REC Unit</u>
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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.

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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:

For the District:

City Administrator

Superintendent

City of Lake Elmo, MN

Stillwater Area Public Schools

3800 Laverne Ave N

1875 Greeley Street S.

Lake Elmo, MN 55042

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.

[remainder of page left blank intentionally]

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: _____

By: _____

Its: School Board Chair

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.

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

RESOLUTION NO. 2011-007B

**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 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 of the Joint Powers Agreement, is willing to purchase the Property and enter into a long-term lease with the District for the Property; and

WHEREAS, subject to the terms and conditions of the Joint Powers Agreement, the District desires to enter into a long-term lease for the Property and to construct and operate a Facility on the Property; and

WHEREAS, cities are authorized to enter into development contracts as contemplated in Minnesota Statutes Section 462.358, Subd. 2(a); 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 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: _____, 2010 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 ____ day of _____, 2010, 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 purchase the Property and enter into a long-term lease with the District for the Property; and

WHEREAS, subject to the terms set forth below, the District desires to enter into a long-term lease for the Property and to construct and operate a Facility on the Property; 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 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, 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. After execution of this Agreement by both parties, and no later than March 15, 2011, the City will exercise its option for the purchase of the Property, with a closing no later than May 31, 2011, subject to those contingencies as set forth in the option agreement.

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

C. Promptly after the City has 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, or if the City is not able to reach a mutual agreement with the District concerning the allocation of remediation costs, if any. 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 City's 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, located on City property, 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 will be charged the following development fees at the rates now in effect in the City, as set forth below:

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

J. Concurrent with its performance of other obligations under this ARTICLE I, the City will negotiate in good faith with the District concerning the terms of a long-term lease (as allowed pursuant to Minnesota State Statute) for the Property, at \$1 per year, with the object of closing on the District's purchase of the Property not later than May 31, 2011 and closing on the lease with the District and making the Property available to the District for construction not later than June 3, 2011. The lease must permit the District to utilize and sublet portions of the Facility and Property for programs and services that support and advance, directly or indirectly, early childhood educational programming and activities.

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 require 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.

E. Concurrent with its performance of other obligations under this ARTICLE II, the District will negotiate in good faith with the City concerning the terms of a long-term lease (as allowed pursuant to Minnesota State Statute) for the Property, at \$1 per year, with the object of closing on the District's purchase of the Property not later than May 31, 2011 and closing on the lease with the District and making the Property available to the District for construction not later than June 3, 2011. The lease must permit the District to utilize and sublet portions of the Facility and Property for programs and services that support and advance, directly or indirectly, early childhood educational programming and activities.

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.

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 June 3, 2011 or such other date as mutually agreed by the parties as the date of closing on the lease agreement (the "Closing Date"), City and District shall have complied with the terms and conditions of this Agreement and City's 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 acquisition, processing and closing costs associated with the City's performance of obligations delineated in this Agreement.

ARTICLE III

Miscellaneous Provisions

A. 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, paragraph I and Article III, paragraph A.

C. The City and District shall jointly endeavor to 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:

For the District:

City Administrator

Superintendent

City of Lake Elmo, MN

Stillwater Area Public Schools

3800 Laverne Ave N

1875 Greeley Street S.

Lake Elmo, MN 55042

Stillwater, MN 55082

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

G. 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.

[remainder of page left blank intentionally]

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: _____

By: _____

Its: School Board Chair

Its: School Board Clerk

EXHIBIT A

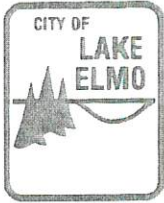
Legal Description of Property

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 Purchase Option agreement and this Agreement
February 24, 2011	District approval of this Agreement
March 4, 2011	Parties agree on site location for Facility
March 15, 2011	City exercises option to purchase
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	City closes on purchase of Property
June 3, 2011	City and District close on lease agreement
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



MAYOR & COUNCIL COMMUNICATION

DATE: 2/17/2011
SPECIAL
ITEM #: 2
ACTION *Resolution 2011-008*

AGENDA ITEM: Consideration of Resolution No. 2011-008: Regarding a proposed Purchase Option (PO) for property owned by Lake Elmo Business Park Company for locating an Early Childhood Education Family Center in Lake Elmo.

SUBMITTED BY: May & City Council Request

THROUGH: Bruce A. Messelt, City Administrator *BAM*

REVIEWED BY: Dave Snyder, City Attorney

SUMMARY AND ACTION REQUESTED: The City Council is respectfully requested to consider Resolution 2011-008 relating to a proposed Purchase Option for property owned by Lake Elmo Business Park Company, designed to facilitate location of the Stillwater Area School District's Early Childhood & Family Center in Lake Elmo.

BACKGROUND INFORMATION & STAFF REPORT: In August 2010, on November 3rd, 2010, and on February 1st, 2011, the City Council directed the City Administrator to actively seek to formulate a proposal to potentially locate the Stillwater Area School District's Early Childhood & Family Center in Lake Elmo.

Since that time, significant effort and conversation has taken place regarding this potentiality, leading to recent efforts to craft a specific proposal for City and School District consideration. Tonight's presentation will serve as a final consideration by the City Council of the proposed Purchase Option on the identified property (under the current schedule).

RECOMMENDATION: It is respectfully recommended that the City Council receive a brief presentation by the City Administrator and Attorney and then consider Resolution 2011-008 relating to a proposed Purchase Option for property owned by Lake Elmo Business Park Company, designed to facilitate location of the Stillwater Area School District's Early Childhood & Family Center in Lake Elmo.

ATTACHMENTS:

1. Resolution No. 2011-008 and Proposed Purchase Option

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item City Administrator
- Report/Presentation..... City Administrator
- Questions from Council Mayor Facilitates
- Public Input, if Appropriate Mayor Facilitates
- Motion and Discussion Mayor & Council
- Council Action..... Mayor Facilitates

(

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

RESOLUTION NO. 2011-008

**A RESOLUTION APPROVING A PURCHASE OPTION WITH
LAKE ELMO BUSINESS PARK COMPANY 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 in the Purchase Option, is willing to purchase the Property or convey the Purchase option to the District, at a price of \$74,500 per acre; and

WHEREAS, the parties desire to enter into an Option Contract to provide for the purchase or conveyance of the purchase option of the property; and

WHEREAS, cities are authorized to enter into such contracts as contemplated in Minnesota Statutes.

NOW, THEREFORE, BE IT RESOLVED, *that the City Council of the City of Lake Elmo does hereby approve an Option Contract with Lake Elmo Business Park Company in the form attached herein, for purchase or conveyance of this option for the location of an Early Childhood and Family Center in the City of Lake Elmo.*

BE IT FURTHER RESOLVED *that the Option Contract 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 Option Agreement for, by and on behalf of the City of Lake Elmo, Minnesota.

Date: _____, 2010 CITY OF LAKE ELMO

By: _____
Dean A. Johnston
Mayor

ATTEST:

Sharon Lumby
City Clerk

Bruce A. Messelt
City Administrator

OPTION CONTRACT

Option Contract ("Agreement or "Option Contract") made and given this ____ day of _____, 2011 (the "Effective Date").

For and in consideration of the sum of One Thousand and No/100 Dollars (\$1,000.00) ("Initial Option Fee"), which the City of Lake Elmo, a Minnesota municipal corporation ("Buyer") shall within five (5) days after this Option Contract is fully executed, deliver to Lake Elmo Business Park Company, a Minnesota partnership ("Seller"), Seller does hereby grant unto Buyer or its Successor or Assigns, the exclusive right and option for a period commencing on the date hereof and ending at 11:59 p.m. on March 15th, 2011, ("Termination Date") to purchase all or any parcels of land lying and being in the City of Lake Elmo, in the County of Washington and the State of Minnesota, as shown on Exhibit A attached and legally described on Exhibit B attached hereto (the "Property").

However, this Option Agreement is subject to each of the terms and conditions hereinafter set forth.

1. **PURCHASE PRICE:** The purchase price for the identified Lots are as follows,

For Lot 3, Block 2, Brookman 3rd Addition (PIN 1302921220014), the purchase price is \$ 74,500 per acre, based on 5.01 acres;

For Lot 2, Block 2, Brookman 3rd Addition (PIN 1302921220013), the purchase price is \$ 74,500 per acre, based on 5.01 acres;

For Lot 1, Block 1, Brookman 3rd Addition (PIN 1302921220011), the purchase price is \$ 74,500 per acre, based on 2.68 acres;

For Lot 1, Block 2, Brookman 3rd Addition (PIN 1302921220012), the purchase price is \$ 74,500 per acre, based on 3.73 Acres;

~~If the option is exercised on all of the Lots listed above by March 15th, 2011, the purchase price shall be \$ 67,500 per acre, based on 16.43 acres.~~

~~Under seperate consideration, for Lot 1, Block 3, Brookman 3rd Addition (PIN 1302921210007), the purchase price is \$ 87,120 per acre based on 4.57 Acres, if the option is exercised by March 15th, 2011, after which time the option shall revert to a Right of First Refusal, as determined by demonstration by the Seller of a bona fide and binding Purchase Agreement, effective until December 31st, 2011.~~

- A. \$1,000.00 Initial Option Fee which will be held and disbursed in accordance with Agreement and if Buyer purchases any of the identified Lots, the Initial Option Fee will be credited against the purchase price of the last Lots in the development.
- B. Buyer agrees, subject to extension for delays in Seller's performance of its obligations under this Agreement, that it must exercise its option rights on the 4 Lots in the development as follows:

Lot 3, Block 2, Brookman 3rd Addition – by March 15th, 2011, with projected closing on or before June 1, 2011.

Lot 2, Block 2, Brookman 3rd Addition – by March 15th, 2011, with projected closing on or before June 1, 2011.

Lot 1, Block 2, Brookman 3rd Addition – by March 15th, 2011, with projected closing on or before January 2nd, 2012.

Lot 1, Block 1, Brookman 3rd Addition – by March 15th, 2011, with projected closing on or before January 2nd, 2012.

~~Lot 1, Block 3, Brookman 3rd Addition – by March 15th, 2011, with projected closing on or before June 1, 2011, or via Right of First Refusal by December 31st, 2012, with project closing thereafter as mutually determined.~~

This option may be exercised as to one, more than one, or all of the Lots and will not terminate by exercise of the option right as to less than all of the Lots.

2. **FAILURE TO EXERCISE OPTION:** Buyer shall have no obligation to purchase any Lot under this Agreement, it being agreed by the parties hereto that this is an Option Contract and not a purchase agreement.
3. **MANNER OF PAYMENT:** If Buyer exercises any option right to purchase a Lot, the entire purchase price for any Lot or Lots shall be payable in cash or other terms, as mutually determined and agreed upon. The purchase price for each Lot shall be payable on the date ("Closing Date") the purchase of such Lot is closed.
4. **CLOSING:** The Closing Date for each Lot shall be a date specified by Buyer in the notice delivered by Buyer to inform Seller that Buyer, or its Successor or Assigns is exercising its option with respect to such Lots, which date shall be no later than ninety (90) days after the date of such notice unless otherwise stated herein, or such date is extended by the mutual agreement of Seller and Buyer. On any Closing Date, Seller shall execute and deliver to Buyer the following:

- A. A Warranty Deed conveying the Lot or Lots purchased to Buyer, free and clear of all liens, charges and encumbrances, except for Permitted Exceptions as defined in Section 6 below.
- B. All other documents which are necessary or desirable to convey the Lots being purchased, including all documents required by Chicago Title Insurance Company or any other title insurance in form acceptable to Buyer and Buyer's Lender, if any.

The closing and delivery of all such documents shall take place at the office of Chicago Title Insurance Company or at such other place as may be reasonably specified by Buyer or its Successor or Assigns. Seller agrees to deliver possession of the Lot or Lots purchased to Buyer on the Closing Date.

Buyer may terminate Purchase Agreement prior to closing of any identified Lot if any of the following conditions apply:

- A. A Phase I Environmental Survey conducted at Buyer's expense identifies conditions making the site unacceptable for an Early Childhood and Family Education Facility or general public/civic facility.
- B. The Stillwater Area School District fails to secure approval from the State of Minnesota for placement of an Early Childhood and Family Education Facility on the site or fails to secure appropriate financing to construct such facility.
- C. The Buyer, or its Successor or Assigns, fails to acquire necessary zoning and land use authority for construction of such facility or fails to secure appropriate financing to execute this Agreement.

Buyer shall forfeit to Seller initial Option Fee should such termination occurs prior to closing.

- 5. **APPLYING OPTION PAYMENTS TO PURCHASE PRICE:** If Buyer purchases any of the Lots, the Initial Option Fee shall be credited against the purchase price for the last Lot remaining subject to this Agreement after conveyance of all the Lots to Buyer. If this Agreement is terminated prior to conveyance of all the Lots to Buyer, the Initial Option Fee, shall be retained by Seller.
- 6. **TITLE AND EXAMINATION:** As quickly as reasonably possible after Final Acceptance of this Purchase Agreement:

- A. Seller shall surrender any abstract of title and a copy of any owner's title insurance policy for the property, if in Seller's possession or control, to Buyer or Buyer's designated title service provider; and
- B. Buyer shall obtain the title services determined necessary or desirable by Buyer or Buyer's lender, including but not limited to title searches, title examinations, abstracting, a title insurance commitment or an attorney's title opinion at Buyer's selection and cost and provide a copy to Seller.

Seller shall use Seller's best efforts to provide marketable title by the date of closing. Seller agrees to pay all costs and fees necessary to convey marketable title including obtaining and recording all required documents, subject to the following:

In the event Seller has not provided marketable title by the date of closing, Seller shall have an additional 30 days to make title marketable, or in the alternative, Buyer may waive title defects by written notice to Seller. In addition to the 30-day extension, Buyer and Seller may, by mutual agreement, further extend the closing date. Lacking such extension, either party may declare this Purchase Agreement canceled by written notice to the other party, or licensee representing or assisting the other party, in which case this Purchase Agreement is canceled. If either party declares this Purchase Agreement canceled, Buyer and Seller shall immediately sign a Cancellation of Purchase Agreement confirming said cancellation and directing all earnest money paid hereunder to be refunded to Buyer.

7. SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS.
Seller represents, warrants and covenants to Buyer as follows:

- A. Authority. This Agreement has been duly executed and delivered; any closing documents to be signed by Seller will be duly executed and delivered on each Closing Date; such execution, delivery and performance by Seller do not and will not conflict with or result in a violation of any judgment, order, or decrees of any court or arbiter to which Seller is a party or by which it is bound; this Agreement and those closing documents to be signed by Seller will contain the valid and binding obligations of Seller, and be enforceable in accordance with their terms.
- B. Leases. As of the Effective Date and the Closing Date, the Property is not, and will not be, subject to any lease or occupancy agreement.
- C. Special Assessments. Seller shall pay the outstanding balance due to the City of Lake Elmo for all special assessments levied or pending against

any Lot on the Closing Date for such Lot. Seller shall pay all availability charges required for development. Buyer shall pay for SAC, WAC and building permit charges.

- D. Environmental Laws. Seller has no knowledge, after exercising due diligence in reviewing its files, correspondence and other relevant information concerning the Property, that any toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitations, asbestos, area formaldehyde, the group of organic compounds known as polychlorinated biphenyl's, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, and any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601-9657, as amended) have been generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located in the Property, nor does Seller have any knowledge, after exercising due diligence as described above, or any activity having been undertaken on the Property that would cause or contribute to (i) the Property becoming a treatment, storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of, the Resource Conservation and Recover Act of 1976 ("RCRA"), 42 U.S.C. 6901 et seq., or any similar state law or local ordinance, (ii) a release or threatened release of toxic or hazardous wastes or substances, pollutants or contaminants from the Property within the ambit of CERCLA or any similar state law or local ordinance, or (iii) the discharge of pollutants or effluents into any water source of system, the dredging or filling of any waters or the discharge into the air of any emissions, that would require a permit under the Federal Water act, 33 U.S.C. 1251 et se ., or the Clean Air Act, 42 U.S.C. 7401 et seq., or any similar state law or local ordinance. After exercising due diligence as described above, Seller knows of no substances or conditions in or on the Property tat may support a claim or cause of action under RCRA, CERCLA or any other federal, state or local environmental statutes, regulations, ordinances or other regulatory requirements.
- E. Rights of Others to Purchase Property. Seller has not entered into any other contracts for the sale of the Property, nor are there any rights of first refusal or options to purchase the Property or any other rights of others that might prevent the consummation of this Agreement.
- F. Seller's Defaults. Seller is not in default concerning any of its obligations or liabilities regarding the Property.

- G. FIRPTA. Seller is not a "foreign person," "foreign partnership," "foreign trust" or "foreign estate" as those terms are defined in Section 1445 of the Internal Revenue Code.
- H. Proceedings. There are no claims, actions, suits, proceedings or investigations pending or, to Seller's knowledge, threatened by any governmental department or agency, or any corporation, partnership, entity or person, which in any manner or to any extent may affect (i) the Property, (ii) Seller's right, title and interest in and to any part or all of the Property, or (iii) Seller's ability to vest in Buyer a fee simple ownership interest in the Property free and clear of any and all liens, claims encumbrances and rights of redemption except the Permitted Exceptions.
- I. Access. The Property has public access by roadways duly dedicated and accepted by the public bodies having jurisdiction thereof and said roadways provide access to the public roadway system of the State of Minnesota.
- J. Wetlands. The Property is not in a designated wetland, flood plain or flood insurance area.
- K. Encroachments. Seller is aware of no encroachments on the property.
- L. Well Abandoned. Prior to Closing, Seller shall take all actions which are necessary to properly seal any wells which may be located on the Property in accordance with Minnesota Statute and the rules adopted by the Minnesota Commissioner of Health.

Seller will define, identify and hold Buyer, its successors and assigns, harmless from and against any expenses or damages (including reasonable attorneys' fees) that Buyer incurs because of the breach of any of the above representations, warranties, or covenants whether such breach is discovered before or after any Closing Date, and all expenses and attorneys' fees incurred by Buyer in enforcing its right to defense, indemnification and reimbursement. Each of the representations, warranties and covenants herein contained shall survive each Closing and consummation of this Agreement by Buyer with knowledge of any such breach by Seller will not constitute a waiver or release by Buyer of any claims due to such breach.

- M. Seller shall convey, upon request by Buyer, all easements reasonably necessary to extend trunk sewer and water to the lots without cost to the City and the City shall provide sewer and water to the property lines,

including Lot 1, Block 3, Brookman 3rd Addition (PIN 1302921210007) and Lot 2, Block 3, Brookman 3rd Addition (PIN 1302921210016).

8. **BUYER'S REPRESENTATIONS AND WARRANTIES.**

Buyer represents, warrants and covenants to Seller as follows:

- A. Buyer is duly organized and is in good standing under the laws of the State of Minnesota; that Buyer has the requisite power and authority to enter into the Agreement and the execution and delivery of this Agreement has been duly authorized by all necessary action on the part of Buyer.
- B. Buyer agrees to initiate and use its best efforts to complete realignment of current public right-of-way easement located between Lot 3, Block 2 and Lot 1, Block 3, Brookman 3rd Addition to a mutually-agreed upon alternative location.
- C. Buyer agrees to limit local SAC and WAC charges, or any future initial sewer and water service assessments, for all Lots not purchased by Buyer under this Purchase Option, to that currently calculated for sewer and water service to such Lots and included as exhibit C, including Lot 1, Block 3, Brookman 3rd Addition (PIN 1302921210007) and Lot 2, Block 3, Brookman 3rd Addition (PIN 1302921210016).
- D. Buyer agrees to indemnify Seller from any future initial assessments for provision of public parking on or adjacent to all Lots not purchased by Buyer under this Purchase Option, including Lot 1, Block 3, Brookman 3rd Addition (PIN 1302921210007) and Lot 2, Block 3, Brookman 3rd Addition. For such consideration, Seller agrees to provision of necessary additional utility, parking and public sidewalk/pathway easement and consents to Buyer's utilization of reasonable financing tools, including but not limited to Tax Increment Financing, to underake such public improvements.

9. **CONDITIONS.** Seller's right to receive the Initial Option Fee from the Escrow Agent is contingent upon each of the following:

- A. Seller's delivery, promptly after the execution of this Agreement, to Buyer or Buyer's Successor or Assigns of copies of all surveys, plans, designs, environmental reports, governmental approvals and any documents relating to the development or design or platting of the Property that Seller has in its possession, if any;

- B. Buyer or Buyer's Successor or Assigns receiving and approving an environmental study satisfactory to it acquired at Buyer's expense within 60 days of the date this agreement is signed by all parties.
- C. Seller's delivery of an agreement in form acceptable to Buyer's or Buyer's Successor's or Assigns' counsel which has been dully executed by the holder of any mortgage against the Property, which agreement will obligate any such mortgagee to deliver a release of its mortgage for any property that is acquired by Buyer or Buyer's Successor or Assigns pursuant to this Agreement.
- D. Buyer, or Buyer's Successor or Assigns, and Seller agree to mutually and affirmatively consider any lot line adjustments or replatting, at Buyer's or Buyer's Successor's or Assigns' expense, and as mutually beneficial to effect exercise of this Purchase Option for the identified purposes and uses.

If any of the forgoing conditions are not satisfied, Buyer or Buyer's Successor or Assigns shall have the right to terminate this Option Contract and, in such case, the Initial Option Fee shall be immediately returned to Buyer. Any and all of the foregoing conditions are for the sole benefit of Buyer or Buyer's Successor or Assigns and may be waived, in writing, by Buyer or Buyer's Successor or Assigns.

- 10. **PLAT APPROVAL.** (Intentionally Deleted)
- 11. **RIGHT OF ENTRY.** Seller hereby grants Buyer or Buyer's Successor or Assigns, and its agents the right of access onto the Property without charge and at all reasonable times for the purpose of Buyers or Buyer's Successor or Assigns investigating the physical condition thereof, including, with limitation, topographic and soil conditions and for the purpose of making test pits, soil borings, market and engineering studies, feasibility studies, environmental investigations and any other test, studies or investigations of the Property. Buyer or Buyer's Successor or Assigns shall immediately repair any damage to the Property caused by such inspections and studies and shall indemnify and hold Seller harmless from any loss, cost, damage or expense, including without limitation, reasonable attorneys' fees, arising from or in connection with Buyer's or Buyer's Successor or Assigns entry upon the Property for the foregoing inspection, testing and related purposes.

12. **BUYER'S CLOSING DOCUMENTS.** On the Closing Date for any Lot, Buyer, or Buyer's Successor or Assigns, will execute and/or deliver to Seller the following (collectively, the "Buyer's Closing Documents"):
- A. The Purchase Price for the Lot in cash, certified funds or wire transfer.
 - B. Such documents as may be reasonably required by Title Insurer to record the Warranty Deed and issue any title policies required by this Agreement.
13. **CLOSING COSTS AND PRORATIONS.** Real estate taxes due and payable in the year any Lot is purchased shall be prorated to the Closing Date between Seller and Buyer, or Buyer's Successor or Assigns, with Buyer, or Buyer's Successor or Assigns, paying all real estate taxes payable after the Closing Date and Seller paying all real estate taxes against the Property through the Closing Date. At closing Seller shall pay all special assessments against the Lot which are levied or pending as of the Closing Date for any Lot and all deferred real estate taxes and special assessments. Seller shall also pay the real estate transfer fees and the costs of preparing the Commitment and performing any searches. Buyer, or Buyer's Successor or Assigns, shall pay all of the recording fees and the premium for the title policies. Buyer, or Buyer's Successor or Assigns, and Seller shall each pay one-half of the Title Insurer's closing fees, with respect to the closing for any Lot.
14. **CONDEMNATION.** If, prior to the Closing Date, eminent domain proceedings are commenced against all or any part of the Property, Seller shall immediately give Buyer written notice of such fact and Buyer or Buyer's Successor or Assigns shall have the right (to be exercised within thirty (30) days after receipt of Seller's notice) to terminate this Agreement and recover all monies paid by Buyer or Buyer's Successor or Assigns hereunder. If this Agreement is so terminated, neither party will have further obligations under this Agreement and any monies paid by Buyer hereunder shall be immediately returned to Buyer. If Buyer does not terminate this Agreement, the purchase price for the last Lots to be purchased by Buyer or Buyer's Successor or Assigns shall be reduced by any condemnation awards paid to Seller prior to closing on such Lots and Seller shall, at closing, assign to Buyer or Buyer's Successor or Assigns all of Seller's right, title and interest in and to any award made or to be made in the condemnation proceedings.
15. **REMEDIES.** If Buyer, or Buyer's Successor or Assigns, fails to purchase a Lot in accordance with this Agreement, and Seller has fully performed all of Seller's obligations under this Agreement, as and when due, Seller shall have the right to terminate this Agreement by giving written notice to Buyer. If Buyer, or Buyer's Successor or Assigns, fails to cure such failure within the time period specified in Section 2 of this Agreement, this Agreement will

terminate. Upon such termination, the Initial Option Fee and the Additional Option Payment shall be delivered to Seller if such funds have not already been paid to Seller and Seller shall retain such funds, and Buyer or Buyer's Successor or Assigns, shall have no claim to such funds. The termination of this Agreement and retention of such funds by Seller will be the sole remedy available to Seller for such failure by Buyer, or Buyer's Successor or Assigns, and Buyer, or Buyer's Successor or Assigns, will not be liable for damages or specific performance, it being agreed by the parties hereto that this Agreement is an Option Contract and not a purchase agreement. If Seller defaults under this Agreement, Buyer, or Buyer's Successor or Assigns, shall have the right to seek and recover damages from Seller for nonperformance or to seek specific performance of this Agreement.

16. **SURVIVAL.** All of the representations, warranties and other terms of this Agreement will survive and be enforceable after the closing on any Lot and will not merge into any Warranty Deed for the Lot which will be delivered by Seller to Buyer, or Buyer's Successor or Assigns.
17. **NOTICES.** All notices required or permitted to be given hereunder shall be in writing and shall be deemed given upon (i) personal service, (ii) three (3) business days following deposit in the United States first class mail, postage prepaid, and addressed as set forth below, or (iii) facsimile transmission (confirmation received) at the facsimile numbers listed below. Said addresses and numbers may be changed by written notice in the manner described in this Section.

If to Seller: Lake Elmo Business Park Property,
 A Business Partnership
 118 Main Street South
 P.O. Box 36
 Stillwater, MN 55082

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

18. **CAPTIONS.** The paragraph headings or captions appearing in this Agreement have been inserted for convenience only, are not part of this Agreement and are not to be considered in interpreting this Agreement.
19. **ENTIRE AGREEMENT; MODIFICATION.** This written Agreement together with the Exhibits attached hereto constituted the completed agreement between the parties and supersedes and prior to contemporaneous oral or written

agreements between the parties regarding the Property. There are not verbal agreements between the parties regarding the Property. There are not verbal agreements that change this Agreement and on waiver of any of its terms will be effective unless in a writing executed by the party against whom enforcement is sought.

- 20 **TIME.** Where any date or time prescribed by this Agreement falls on a Saturday, Sunday, or holiday, such date or time shall automatically be extended to the next business day.
- 21 **BINDING EFFECT.** This Agreement binds and benefits the parties and their successors and assigns.
- 22 **CONTROLLING LAW.** This Agreement has been made under the laws of the State of Minnesota, and such laws will control its interpretation.
- 23 **INDEMNIFICATION AGAINST BROKERAGE FEES OR COMMISSION.** Buyer and Seller represent and warrant to one another that no broker or finder has been engaged in connection with the purchase and sale hereof. Furthermore, Buyer and Seller each hereby agree to indemnify and hold the other harmless from any claim for any brokerage fee or commission or finder's fee or commission claimed or incurred as the result of the action of the party other than the party against whom the claim is made.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

SELLER: **Lake Elmo Business Park Property**

By _____
Its: _____

BUYER: **CITY OF LAKE ELMO**

By _____
Dean Johnston, Mayor

By _____
Sharon Lumby, City Clerk

Attest _____
Bruce Messelt
City Administrator

EXHIBIT A - Map of Property

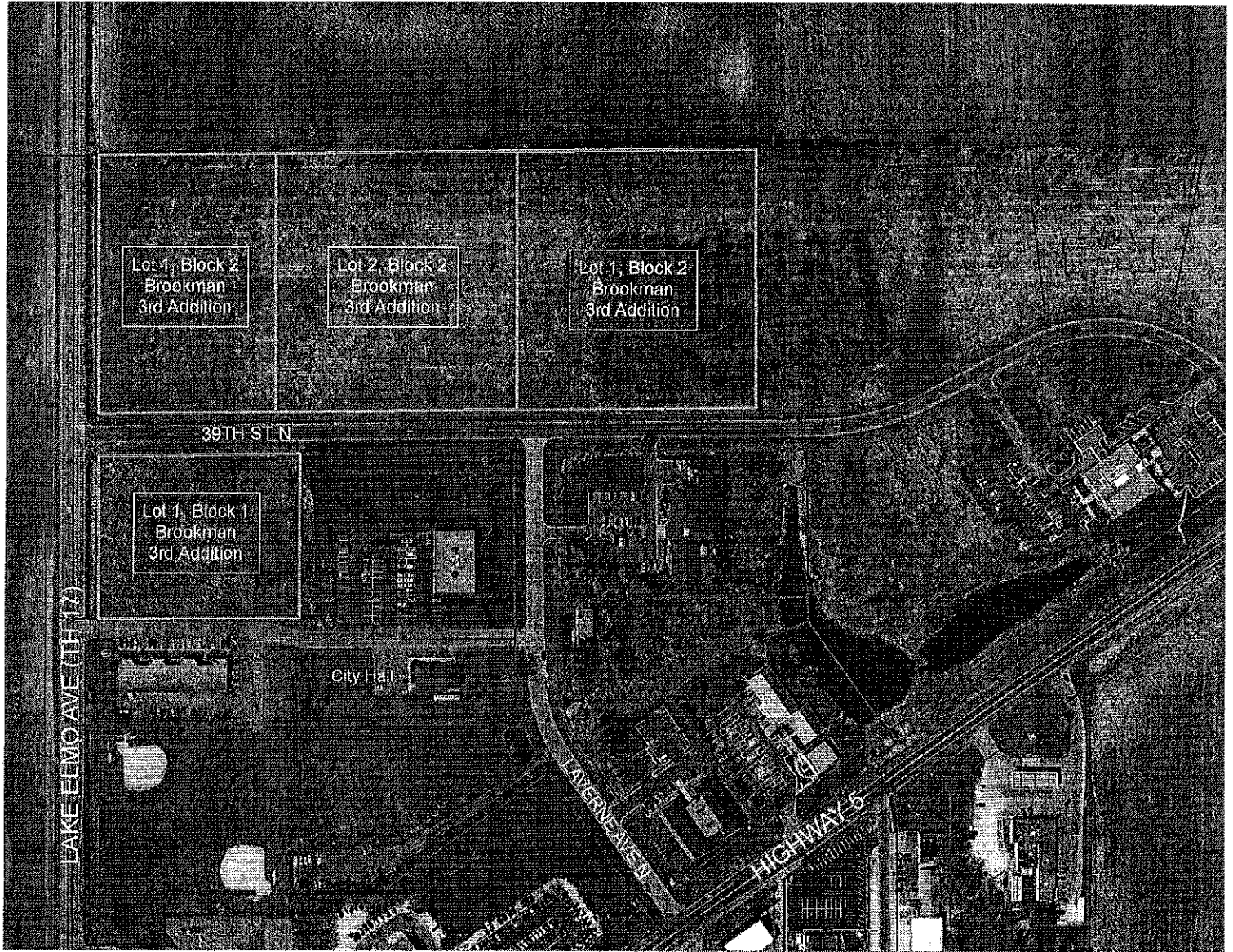


EXHIBIT B - Legal Description of Property

Lot 1, Block 2 of Brookman 3rd Addition, Washington County, Minnesota.

Lot 2, Block 2 of Brookman 3rd Addition, Washington County, Minnesota.

Lot 3, Block 2 of Brookman 3rd Addition, Washington County, Minnesota.

Lot 1, Block 1 of Brookman 3rd Addition, Washington County, Minnesota.

EXHIBIT C - City of Lake Elmo SAC and WAC Charges

The Buyer agrees that the Seller will be charged no more than the following development fees at the rates now in effect in the City, as set forth below:

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

The Buyer will charge Seller the Metropolitan Council sewer availability and water availability charges (SAC and WAC) at the rates in effect at the time of connection.

The Buyer and the Seller mutually agree to limit imposition of WAC/SAC charges for any/all future development on the Lots denoted in Section 8, Subsection C, as determined by the following (current MCES Guidelines), or a MCES-approved pro-rated portion thereof:

Assuming General Office Space or Library (both w/meeting rooms): 1 SAC = 1,650 s.f.

20,000 s.f building = 12 RECs

30,000 s.f building = 18 RECs

40,000 s.f building = 24 RECs – Maximum REC charged per Lot

Assuming General Office Space (no meeting rooms): 1 SAC = 2,400 s.f.

20,000 s.f building = 8 RECs

30,000 s.f building = 13 RECs

40,000 s.f building = 17 RECs – Maximum REC charged per Lot

DSI Development
-REO Asset Managers-

February 17, 2011

City of Lake Elmo
Dean Johnson, Mayor
Mike Pearson, Council Member
Brett Emmons, Council Member
Nichole Park, Council Member
Anne Smith, Council Member

Re: Endorsement of Sanitary Sewer Project for Lake Elmo Old Village by Large Property Owner

Dear Honorable Mr. Mayor and Honorable City Council Members:


JIB LLC is the owner of approximately 192 acres of land located within the Lake Elmo Old Village Area. As the owner of this property we recognize the importance of creating and following through on a plan for future development that is consistent with the adopted Old Village Plan yet is achievable in today's challenging economic environment. In addition, it is critical to JIB LLC that the final plan for future development in the Old Village Area maximizes property values of the impacted parcels.

We believe the sanitary sewer infrastructure proposal to facilitate the development of the Stillwater School Board's proposed Early Childhood Family Center achieves the goals of JIB LLC as outlined above. Further, the timing of the sanitary sewer project assures the future development of the Old Village Area by creating real opportunities for calculated and methodical growth.

JIB LLC is prepared to cooperate with the City of Lake Elmo's staff and consultants to expedite the feasibility, pre-development planning and logistics necessary to achieve the expeditious schedule as currently proposed for the installation and completion of the sanitary sewer to facilitate the Old Village Area and the Early Childhood Family Center. This public/private cooperation will help a great plan to become a future reality for the City of Lake Elmo.

Although much work is yet to be accomplished with the current sanitary sewer proposal, JIB LLC as an owner of 192 acres located within the impacted area, endorses the City Council approving and moving forward with the current sanitary sewer proposal.

Sincerely,



David B. Deebach,
DSI Development
Owner's Representative for JIB LLC

3094 Torrey Drive
Woodbury, MN 55125

651.775.9741
deebach@comcast.net

Todd Williams 3025 Lake Elmo Ave No 277-0446
Greg McQuatt 1509th, 15th St. Ct. N. 7480182
Dewey Thorbeck, 2121 Delaware Ave, Mendota Hills 651-454-3101
Pete Schiltgen 1088 Stillwater Blvd. 651-770-3326
Bill Hagberg, 3060 Lake Elmo Ave. 651-777-7805
Jus & Pam Tuttle 10010 Tapscott Rd 651-490-5885
Ken & Deb Krueger - PLEASE KEEP US INFORMED! KEEP
COMMUNICATING. NDKRUEGER@MSN.COM

Wendy Griffin 2835 Lake Elmo Ave 651-777-7356
→ would like to see sewer line & cost break ✓
- BEWARE of thinking GREEN ACRES tax breaks will be maintained if
any land is built upon & not farmed.

Ruth Stark & Molly Stark 651-
Time For Me Early Learning 770-8865
Cindy & Scott Van Meeteren - Stillwater
Susan Jakog, - Stillwater
Mike Ptacek, 811 Eagle Ridge, Stillwater, 651-430-9450
STEVE DELAPP LAKE ELMO 651 777-1061
Mike Pearson 2825 Lisco LE 651-775-3704
Anne Smith Marquess Ln N LE 351-0811
Don Johnston 8200 Hill Trail N 777-4444