

*(reserved for recording information)*

## **SITE IMPROVEMENT AGREEMENT**

### **OAK-LAND MIDDLE SCHOOL ADDITION**

**THIS SITE IMPROVEMENT AGREEMENT (this “Agreement”)** is dated \_\_\_\_\_, 20\_\_\_\_, by and between the **City of Lake Elmo**, a Minnesota municipal corporation (the “City”) and **Independent School District No. 834, Stillwater Area Public Schools**, a Minnesota body corporate and politic (the “Developer”).

**1. REQUEST TO BEGIN SITE IMPROVEMENTS.** The Developer is the fee owner of the property legally described on the attached Exhibit A (the “Property”). The Developer has asked the City to allow the Developer to begin making site improvements to the Property including grading and the installation of utilities (referred to in this Agreement as the “Improvements”).

**2. RIGHT TO PROCEED.** This Agreement is intended to regulate the development of the Property and the construction therein of certain public and private improvements. The Developer may not grade or otherwise disturb the earth, remove trees, or construct public or private improvements or any buildings within the Property until all the following conditions precedent have been satisfied:

- A. the Developer has executed and recorded with Washington County any drainage and utility easements required for the Property by the City Engineer and Public Works Director

in the City's standard form;

- B. this Agreement has been executed by the Developer and the City;
- C. the required Security (as hereinafter defined) has been received by the City from or on behalf of the Developer;
- D. construction plans and specifications have been submitted by the Developer and approved by the City Engineer for the improvements to be completed under this agreement;
- E. the Developer has provided the City with the Administration and Construction Observation Escrow required by this Agreement;
- F. the Developer has paid the City for all legal, engineering, and administrative expenses incurred by the City regarding the City approvals and has given the City the additional Letter of Credit required by this Agreement;
- G. the Developer has paid any outstanding assessments and taxes for the Property;
- H. the Developer has received all necessary permits from the MPCA, MDH, DNR, applicable watershed, Washington County, MnDOT, and any other agency having jurisdiction over the improvements;
- I. the Developer has provided the City with a certificate of insurance required by this Agreement;
- J. the Developer has installed tree protection fencing or additional measures per the approved Tree Preservation Plan and the City has inspected and approved the protections;
- K. the Developer or the Developer's engineer and the Developer's contractor(s) have initiated and attended a preconstruction meeting with the City Engineer and City staff;  
and

- L. the City has issued a written notice that all above conditions have been satisfied and that the Developer may proceed.

**3. SITE IMPROVEMENT PLANS.** The Developer agrees to construct the improvements, at the Developer's sole expense, in accordance with the City approvals, and to construct all improvements in accordance with the construction plans and specifications on file with and approved by the City (collectively, the "Plans"), which have been prepared by a professional engineer registered in the State of Minnesota. All terms and conditions of the City approvals are hereby incorporated by reference into this Agreement. The Plans may not be modified by the Developer without the prior written approval of the City.

**4. IMPROVEMENTS.** In developing the Property in accordance with the Plans, the Developer shall make or install at its sole expense the following public and private improvements (collectively, the "Improvements"):

- A. Grading and erosion control;
- B. Sanitary sewer;
- C. Water system improvements;
- D. Stormwater improvements (storm sewer pipe, control structures, ponds, BMPs, etc.);
- E. Sidewalk, trail, and public right-of-way improvements;
- F. Underground private utilities;
- G. Landscaping;
- H. Tree preservation and reforestation;
- I. Wetland mitigation and buffers; and
- J. Monuments required by Minnesota Statutes.

All Improvements shall be installed in accordance with the approved Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards. The Developer shall instruct its engineer to provide adequate field inspection personnel to assure an acceptable level of quality control to the extent that the Developer's engineer will be able to certify that the construction work meets the

approved Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards as a condition of City acceptance. In addition, the City may, at the City's discretion and at the Developer's expense have one or more City inspectors or a soil engineer inspect the Developer's work on a full or part-time basis. The Developer's engineer shall provide for on-site project management. The Developer's engineer is responsible for design changes and contract administration between the Developer and the Developer's contractor.

**5. CITY ADMINISTRATION AND CONSTRUCTION OBSERVATION.** At the time of the City's execution of this Agreement, the Developer shall submit to the City an amount to be escrowed by the City for City administration and construction observation costs in an amount provided under paragraph 32 of this Agreement - Summary of Security Requirements. Thereafter, the Developer shall reimburse the City each month, within 30 days of receiving an invoice, for all administration and construction observation costs incurred by the City during the construction of the Improvements by the City's engineering, public works, planning, and landscape architecture staff and consultants. After 30 days of the invoice, the City may draw upon the escrow and stop work on the site until the escrow has been replenished in its full amount. City administration and oversight will include monitoring of construction progress and construction observation, consultation with the Developer and the Developer's professionals on status or problems regarding the project, coordination for testing, final inspection and acceptance, project monitoring during the warranty period, and processing of requests for reduction in the escrow or Security. Construction observation shall include, at the discretion of the City, part- or full-time inspection of proposed public utilities and street construction. The City will bill for the services on an hourly basis.

The direction and review provided by the City through the inspection of the Improvements should not be considered a substitute for the Developer-required management of the construction

of the Improvements. The Developer must require the Developer's contractor(s) to furnish the City with a schedule of proposed operations at least five days prior to the commencement of construction of each type of Improvement. The City shall inspect all Developer-installed Improvements during and after construction for compliance with the Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards. The Developer will notify the City at such times during construction as the City requires for inspection purposes. Such inspection is pursuant to the City's governmental authority, and no agency or joint venture relationship between the City and the Developer is thereby created.

**6. CONTRACTORS/SUBCONTRACTORS.** City Council members, City employees, and City Planning Commission members, and corporations, partnerships, and other entities in which such individuals have greater than a 25 percent ownership interest or in which they are an officer or director may not act as contractors or subcontractors for the Improvements identified in paragraph 5 above.

**7. TIME OF PERFORMANCE.** The Developer shall install all required Improvements by October 31, 2026. The Developer may, however, request an extension of time from the City, and the City agrees to grant a reasonable extension for delays in the work caused by governmental orders or delays in City inspections. If the City grants the time extension, it shall be conditioned upon updating the Security or escrow posted by the Developer to reflect cost increases and amending this Agreement to reflect the extended completion date.

**8. MAINTENANCE DURING CONSTRUCTION.** The Developer shall be responsible for all maintenance of the Improvements until the Improvements are accepted by the City in writing. The Developer also is responsible to locate all underground utilities until the Improvements are accepted in writing by the City. Warning signs shall be placed by the Developer when hazards develop in streets to prevent the public from traveling on same and to direct attention to detours.

If and when streets become impassable, such streets shall be barricaded and closed by the Developer. The Developer and its contractors must keep all public roadways open to traffic at all times unless a right-of-way obstruction permit is obtained from the City. The Developer shall be responsible for keeping streets within and outside of the Property clean and clear of dirt and debris that may spill, track, or wash onto the street from the Developer's operations. The Developer shall contract for street cleaning for streets within and immediately adjacent to the Property. At a minimum, scraping and sweeping shall take place on a weekly basis and on a daily basis during heavy tracking days.

**9. LICENSE.** The Developer hereby grants the City, its agents, employees, officers, and contractors a license to enter the Property to perform all work and inspections deemed appropriate by the City in conjunction with the development of the Property and this Agreement.

**10. CONSTRUCTION ACCESS AND PARKING.** Construction traffic access and egress for all work on the site including grading, utility construction, building construction, and Improvements is restricted to access the Property via Manning Avenue (CR 15) at the existing driveway locations per the approved erosion control plans. No construction traffic is permitted on other adjacent local streets, along 10<sup>th</sup> street North, or at any other location along Manning Avenue (CR 15).

All construction parking and staging, including the loading and unloading of equipment and supplies during the construction of the site Improvements and buildings must be completed interior to the project site and is not allowed to occur within any public right-of-way. The Developer and contractors shall be responsible for the repair and restoration of any damage to the street, curb, trail, sidewalk, and boulevard caused by the construction activities. Such work shall meet all City standards and specifications.

**11. CONSTRUCTION SEQUENCE AND COMPLIANCE.** The City will require the Developer to construct the Improvements in a sequence that will allow progress and compliance

points to be measured and evaluated. The Developer and the Developer's representatives are required to supervise and coordinate all construction activities for all Improvements and must notify the City in writing stating when the work is ready for the inspection at each of the measurable points defined in the following paragraphs.

**12. EROSION CONTROL.** Erosion control practices must comply with the Plans and Specifications, the City's Engineering Design and Construction Standards Manual, with all watershed district permits and the Minnesota Pollution Control Agency's Best Management Practices. The City may impose additional erosion control requirements as deemed necessary. The parties recognize that time is of the essence in controlling erosion. If the Developer does not comply with the erosion control plan and schedule or supplementary instructions received from the City, the City may take such action as it deems appropriate to control erosion in accordance with requirements set forth in the City's erosion control regulations and the stormwater pollution prevention plan.

**14. WETLAND MITIGATION.** The Developer shall complete wetland mitigation/restoration in accordance with the Plans and Specifications and in accordance with any applicable watershed or agency permits. If the mitigation work is found to be incomplete or restoration is unsuccessful, the City may draw down the Security at any time during the warranty periods to perform the necessary work if the Developer fails to take corrective measures to remedy the issues with the mitigation or restoration work.

**15. SITE GRADING.** All grading must be done in compliance with this Agreement and the approved grading plans. Within 30 days after completion of the grading, the Developer shall provide the City with an "as built" grading plan and a certification by a registered land surveyor or engineer as required in the City's Engineering Design and Construction Standards Manual. Within five days after completion of the grading, the Developer shall request an inspection of tree preservation plan compliance from the City Planner. If additional tree plantings are required, the

landscape plan shall be modified and additional replacement trees planted as approved by the City prior to the start of the landscape warranty period.

**16. UTILITY IMPROVEMENTS.** All storm sewers, sanitary sewers, and watermain shall be installed in accordance with the approved Plans, the City approvals, the City Code, and the City's Engineering Design and Construction Standards Manual. Once the work is completed, the Developer or the Developer's representative shall submit a written request to the City asking for an inspection of the initial improvements. The City will then schedule a walk-through to create a punch list of outstanding items to be completed. Upon receipt of the written punch list provided by the City, the Developer must complete the punch list items and notify the City to reinspect the Improvements.

**17. LANDSCAPING AND TREE REPLACEMENT IMPROVEMENTS.**

- A. Prior to installation of landscaping, the Developer shall notify the City Planner and a pre-construction meeting shall be held with the City's Landscape Architect to review landscaping requirements, best practices, and inspection schedules.
- B. The Developer agrees to install landscaping in accordance with the approved Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards. All landscaping materials such as trees, shrubs, grasses, or other vegetation installed by the Developer shall be warrantied for a period of two years and maintained throughout the warranty period. The two-year warranty period shall be deemed to start once all required landscaping identified as responsibility of Developer in the approved Plans has received acceptance by the City. The Developer agrees to have the City's Landscape Architect complete yearly inspections to verify compliance with maintenance requirements and conduct a final inspection before the end of the two-year warranty period to verify the compliance of all landscaping with City



requirements. In the event that any landscaping installed by the Developer is deemed through this inspection process to be in poor condition or dead, the Developer is to replace the landscaping with like materials or as otherwise approved by the City within 60 days of notification.

- C. The Developer shall be responsible for maintaining regular watering, fertilizing, and over-seeding necessary to establish final lawns and yards as identified in the approved Plans for public rights-of-way and any disturbed areas outside the Property boundaries according to a landscape maintenance plan approved by the City. The Developer agrees to achieve “substantial performance” on all seeded or sodded areas disturbed during the construction of the Improvements. For the purpose of this Agreement “substantial performance” shall be defined for areas seeded or sodded with a turf or lawn mix as “square foot turf areas with an average blade height of three inches free of eroded, bare, or dead spots and free from perennial weeds or unwanted grasses with no visible surface soil.” For areas seeded with a native grass or flower mix “substantial performance” shall be defined as “square foot native grass or flower areas with an average height of eight inches free of eroded, bare, or dead spots and no visible surface soil.”

**18. SIGNAGE, STREET LIGHTING, AND OTHER UTILITIES.** The Developer agrees to install street signs, traffic and parking signs, and pavement markings within the Property all in accordance with the approved Plans and the City Engineering Design Standards Manual. The Developer shall submit street and traffic sign details to the City for approval prior to installation. In addition, the Developer shall be responsible for the cost and all coordination work to extend private utilities along with street and driveway lighting within the Property all in accordance with the approved plans and right-of-way permits.

**19. ACCEPTANCE AND OWNERSHIP OF IMPROVEMENTS.** Upon completion of the

Improvements required by this Agreement and acceptance by the City, the Improvements lying within public easements shall become City property. Prior to acceptance of the public Improvements by the City, and within 30 days after completion of the work, the Developer shall provide the City with a complete set of reproducible "record" plans and an electronic file of the "record" plans in accordance with the City's Engineering Design and Construction Standards Manual. The record plans shall be certified by a registered engineer. Upon receipt of "record plans" and upon review and verification by the City Engineer that the Improvements have been completed in accordance with the Plans and Specifications, the City Engineer will accept the completed Improvements and initiate the Warranty Period (as hereinafter defined).

**20. SANITARY SEWER AND WATER UTILITY AVAILABILITY CHARGES (SAC AND WAC).** The Developer shall be responsible for the payment of all sewer and water availability and connection charges (SAC) and (WAC) per the City's fee schedule with respect to the Subdivision Improvements required by the City and any state or metropolitan government agency. The following fees shall be paid by the Developer or the Developer's contractor on behalf of the Developer to the City at the time the City issues a building permit for each building with the development:

City Sewer Availability Charge (SAC)	\$3000/REC Unit
City Water Availability Connection (WAC)	\$3000/REC Unit
City Sewer Connection Charge	\$1000/REC Unit
City Water Connection Charge	\$1000/REC Unit
Metropolitan Council Sewer Availability Charge (SAC)	\$2485/REC Unit

**21. BUILDING PERMITS/CERTIFICATES OF OCCUPANCY.**

- A. The City will issue building permits for buildings provided that the final plat has been recorded with Washington County.

- B. The City will not schedule a final building inspection or issue a certificate of occupancy (temporary, permanent or otherwise) for the building to be constructed until all Improvements have been installed and have been accepted by the City in accordance with Section 19 of this Agreement.
- C. Breach of the terms of this Agreement by the Developer, including nonpayment of billings from the City, shall be grounds for denial of building permits, certificates of occupancy, and withholding of other permits, inspection or actions and the halting of all work in the Property.
- D. If the City issues a building permit prior to the acceptance of the public Improvements by the City, the Developer assumes all liability and costs resulting in delays in completion of the Improvements and damage to the Improvements caused by the City, the Developer, the Developer's contractors, subcontractors, materialmen, employees, agents, or any third parties.

## **22. RESPONSIBILITY FOR COSTS.**

- A. The Developer shall be responsible for paying all costs related to the construction of the Improvements, and any corrective and warranty work related to the Improvements, including, but not limited to, legal, planning, engineering, and inspection expenses incurred in connection with the preparation of this Agreement, review of the plans and specifications, and all costs and expenses incurred by the City in monitoring and inspecting the Improvements.
- A. The event that the City receives claims from labor, materialmen, or others that work required by this Agreement has been performed and the amounts due to them have not been paid, and the laborers, materialmen, or others are seeking payment from the City, the Developer hereby authorizes the City to commence an Interpleader action pursuant to Rule 22, Minnesota Rules of Civil Procedure for the District

Courts, to draw upon the Security in an amount up to 125 percent of the claim(s) and deposit the funds in compliance with the Rule, and upon such deposit, the Developer shall release, discharge, and dismiss the City from any further proceedings as it pertains to the funds deposited with the District Court, except that the Court shall retain jurisdiction to determine attorneys' fees pursuant to this Agreement.

- B. The Developer shall hold the City and its officials, employees, and agents harmless from claims made by itself and third parties for damages sustained or costs incurred resulting from the City's approval of the planned unit development and the development of the Property unless caused by the negligence, action, or inaction of the City. The Developer shall indemnify the City and its officials, employees, and agents for all costs, damages, or expenses which the City may pay or incur in consequence of such claims, including attorneys' fees.
- C. The Developer shall reimburse the City for costs incurred in the enforcement of this Agreement, including reasonable engineering and attorneys' fees.
- D. The Developer shall pay, or cause to be paid when due, and in any event before any penalty is attached, any special assessments referred to in this Agreement. This is a personal obligation of the Developer and shall continue in full force and effect even if the Developer sells the Property, or any portion of it.
- E. The Developer shall pay in full all bills submitted to it by the City for obligations incurred under this Agreement within 30 days after receipt. Bills not paid within 30 days shall be assessed a late fee per the City's adopted fee schedule. Upon request, the City will provide copies of detailed invoices of the work performed by the City and its consultants.

**23. CITY PAYMENTS.** The City shall reimburse the Developer in the amount of \$83,000 for oversizing costs associated with the installation of 12 inch water main as identified on the

Plans. City payments shall be made within 30 days of the City's final acceptance of the Subdivision Improvements, but only if the Developer is not in default with respect to any terms of this Agreement. This payment by the City shall be the City's only responsibility with regard to construction of the Subdivision Improvements and in no case shall act as a waiver of any other right of the City under this Agreement or under applicable laws, ordinances or rules.

**24. SPECIAL PROVISIONS.** The following special provisions shall apply to the Property:

- A. Implementation of the recommendations and requirements listed in the August 26, 2024 Engineering Memorandum.
- B. Implementation of the recommendations and requirements listed in the August 27, 2024 Landscape Architect Memorandum.
- C. Implementation of the recommendations and requirements listed in the August 26, 2024 Fire Chief Memorandum.
- D. The Developer must obtain a sign permit from the City prior to installation of any signs.
- E. Compliance with Valley Branch Watershed (VBWD) permit and evidence that all permit conditions have been met prior to any grading activity on site.
- F. All storm water facilities internal to the site shall be owned and maintained by the Developer. A storm water maintenance and easement agreement in a form acceptable to the City shall be executed by the Developer and recorded prior to issuance of building permits.

**25. MISCELLANEOUS.**

- A. The Developer may not assign this Agreement without the written permission of the City Council. The Developer's obligations hereunder shall continue in full force and effect even if the Developer sells the Property or any portion of it.
- B. Retaining walls that require a building permit shall be constructed in accordance with

plans and specifications prepared by a professional engineer licensed by the State of Minnesota. Following construction, a certification signed by the design engineer shall be filed with the City Engineer evidencing that the retaining wall was constructed in accordance with the approved Plans. All retaining walls identified on the Plans or by special conditions referred to in this Agreement shall be constructed before any other building permit is issued for a lot on which a retaining wall is required to be built.

- C. If necessary, the Developer shall provide the City with a copy of written permission for any off-site grading work and storm sewer discharges to adjacent properties before starting any site work or grading.
- D. The Developer shall take out and maintain or cause to be taken out and maintained until six months after the City has accepted the public Improvements, public liability and property damage insurance covering personal injury, including death, and claims for property damage which may arise out of Developer's work or the work of its subcontractors or by one directly or indirectly employed by any of them. Limits for bodily injury and death shall be not less than \$500,000 for one person and \$1,500,000 for each occurrence; limits for property damage shall be not less than \$200,000 for each occurrence; or a combination single limit policy of \$1,500,000 or more. The City shall be named as an additional insured on the policy, and the Developer shall file with the City a certificate of insurance evidencing coverage prior to the City signing this Agreement. The certificate shall provide that the City must be given 30 days' advance written notice of the cancellation of the insurance.
- E. Third parties shall have no recourse against the City under this Agreement.
- F. If any portion, section, subsection, sentence, clause, paragraph, or phrase of this Agreement is for any reason held invalid, such decision shall not affect the validity

of the remaining portion of this Agreement.

- G. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding, amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the City Council. The City's failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.
- H. This Agreement shall run with the land and may be recorded against the title to the Property at the Developer's expense. The Developer covenants with the City, its successors and assigns, that it is the fee owner of the Property and that the Developer will indemnify and hold the City harmless for any breach of the foregoing covenant.
- I. Each right, power, or remedy herein conferred upon the City is cumulative and in addition to every other right, power, or remedy, express or implied, now or hereafter arising, available to City, at law or in equity, or under any other agreement, and each and every right, power, and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power, or remedy.
- J. The Developer represents to the City that the Property and the Improvements comply or will comply with all City, County, metropolitan, state, and federal laws and regulations, including but not limited to: subdivision ordinances, planned unit development regulations, zoning ordinances and environmental regulations. If the City determines that the Property is not in compliance, the City may, at its option, refuse to allow construction or development work in the Property until it is brought into compliance. Upon the City's demand, the Developer shall cease work until there is compliance.

**26. EVENTS OF DEFAULT.** The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events:

- A. Subject to unavoidable delays, failure by the Developer to commence and complete construction of the Improvements pursuant to the terms, conditions, and limitations of this Agreement.
- B. Failure by the Developer to substantially observe or perform any material covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement.

**27. REMEDIES ON DEFAULT.** Whenever any Event of Default occurs, the City, subject to any rights of third parties agreed to by the City pursuant to this Agreement, or otherwise by written, executed instrument of the City, may take any one or more of the following actions:

- A. The City may suspend its performance under the Agreement until it receives assurances from the Developer, deemed adequate by the City, that Developer will cure its default and continue its performance under the Agreement. Suspension of performance includes the right of the City to withhold permits including, but not limited to, building permits.
- B. The City may initiate such action, including legal or administrative action, as is necessary for the City to secure performance of any provision of this Agreement or recover any amounts due under this Agreement from the Developer, or immediately draw on the Security, as set forth in this Agreement.

**28. ENFORCEMENT BY CITY; DAMAGES.** The Developer acknowledges the right of the City to enforce the terms of this Agreement against the Developer, by action for specific performance or damages, or both, or by any other legally authorized means. In the event of a default by the Developer as to construction or repair of any of the Improvements or any other work



or undertaking required by this Agreement, the City may, at its option, perform the work and the Developer shall promptly reimburse the City for any expense incurred by the City. This Agreement is a license for the City to act, and it shall not be necessary for the City to seek an order from any court for permission to enter the Property for such purposes. If the City does such work, the City may, in addition to its other remedies, levy special assessments against the land within the Property to recover the costs thereof. For this purpose, the Developer, for itself and its successors and assigns, expressly waives any and all procedural and substantive objections to the special assessments, including, but not limited to, hearing requirements, and any claim that the assessments exceed the benefit to the land so assessed. The Developer, for itself and its successors and assigns, also waives any appeal rights otherwise available pursuant to Minnesota Statutes Section 429.081.

The Developer also acknowledges that its failure to perform any or all of the Developer's obligations under this Agreement may result in substantial damages to the City; that in the event of default by the Developer, the City may commence legal action to recover all damages, losses and expenses sustained by the City; and that such expenses may include, but are not limited to, the reasonable fees of legal counsel employed with respect to the enforcement of this Agreement.

**29. WARRANTY.** During the warranty period, the Developer warrants that all Improvements will be free from defects and that they will continue to meet all technical specifications and standards. During the warranty period, the Developer agrees to repair or replace any Improvement, or any portion or element thereof, which shows signs of failure, normal wear and tear excepted. If the Developer fails to repair or replace a defective Improvement during the warranty period, the City may repair or replace the defective portion and may draw upon the Security to reimburse itself for such costs. The Developer agrees to reimburse the City fully for the cost of all Improvement repair or replacement if the cost thereof exceeds the remaining amount of the Security. Such reimbursement must be made within 45 days of the date upon

which the City notifies the Developer of the cost due under this paragraph. The Developer hereby agrees to permit the City to specially assess any unreimbursed costs against the Property if the Developer fails to make required payments to the City. The Developer, on behalf of itself and its successors and assigns, acknowledges the benefit to the Property of the repair or replacement of the Improvements and hereby consents to such assessment and waives the right to a hearing or notice of hearing or any appeal thereon under Minnesota Statutes, Chapter 429.

- A. The required warranty period for all work relating to the public sewer and water shall be two years from the date of final written City acceptance of the work.
- B. The required warranty period for all work relating to street construction, including concrete curb and gutter shall be one year from the date of final written City acceptance of the work.
- C. The required warranty period for sod, trees, and landscaping is two years from the date of final written City acceptance of the installation.

**30. SUMMARY OF SECURITY REQUIREMENTS.** To guarantee compliance with the terms of this Agreement, payment of special assessments, payment of the costs of all public Improvements, and construction of all public Improvements, the Developer shall furnish the City with an irrevocable letter of credit or cash escrow or a combination of a cash escrow and a letter of credit (the "Security") in the amount of \$2,740,000. The bank originating the letter of credit shall be determined by the City to be solvent and creditworthy. The letter of credit shall substantially be in the form attached to this Agreement and must be approved by the City. The amount of the Security was calculated as itemized on **Exhibit B**. If at any time the City reasonably determines that the bank issuing the letter of credit no longer satisfies the City's requirements regarding solvency and creditworthiness, the City shall notify the Developer and the Developer shall provide to the City within 45 days a substitute for the letter of credit from another bank meeting the City's requirements. If the Developer fails to provide the City within 45 days with a substitute letter of

credit from an issuing bank satisfactory to the City, the City may draw under the existing letter of credit.

This breakdown is for historical reference; it is not a restriction on the use of the Security. The City may draw upon the Security, without notice, for any violation of the terms of this Agreement or if the Security is allowed to lapse prior to the end of the required term. If the required public Improvements are not completed at least 30 days prior to the expiration of the Security, the City may also draw upon it. If the Security is drawn upon, the proceeds shall be used by the City to cure the default.

**31. REDUCTION OF SECURITY.** Upon written request by the Developer and upon receipt of proof satisfactory to the City Engineer that work has been completed in accordance with the approved Plans and the terms of this Agreement and that all financial obligations to the City have been satisfied, the City Engineer may approve reductions in the Security in the following instances:

- A. Upon completion of grading operations, including temporary site restoration. The Developer must submit an as-built grading survey to the City that at a minimum establishes the as-built grades at all lot corners and downstream drainage conveyance systems and storm water ponds. Upon inspection of the site and approval of the as-built survey by the City, 100 percent, or \$350,000, of the Security associated with grading may be released. This Security reduction does not include amounts related to erosion and sedimentation control.
- B. Up to 75 percent of the Security associated with the itemization on **Exhibit B** may be released upon completion of the following key milestones of the project as determined by the City Engineer:
  - 1. Construction Categories 2 and 3: The amount of \$281,250 may be released when all sanitary sewer and watermain utilities have been installed, all testing and televising has been successfully completed, sanitary sewer as-built inverts

have been verified, and the utilities are considered ready for use by the City Engineer.

2. Construction Categories 4 and 5: The amount of \$879,375 may be released when all sidewalks, and storm sewer have been installed and tested, and have been found to be complete to the satisfaction of the City Engineer including all corrective work for any identified punch list items and including verification of storm sewer as-built inverts, but not including the final wear course.
  3. Construction Categories 6-10 and 14-17: The amount of \$559,688 may be released when all remaining Developer's obligations under this Agreement have been completed including: (1) bituminous wear course; (2) street lighting and private utilities; (3) trails; (4) bio retention facilities; (5) iron monuments for lot corners have been installed; (3) all financial obligations to the City satisfied; (4) the required "record" plans in the form of the City standards have been received and approved by the City; and (5) the public Improvements are accepted by the City Engineer and the City Council.
  4. Construction Categories 11-13: The amount of \$72,188 may be released when landscaping Improvements have been installed to the satisfaction of the City including all corrective work for any identified punch list items.
- C. Twenty-five percent of the original Security amount, excluding grading and landscaping improvements shall be retained until: (1) all Property Improvements have been fully completed and accepted by the City, including all corrective work and warranty punch list items; (2) all financial obligations to the City have been satisfied; and (3) the warranty period has expired.
- D. Twenty-five percent of the original Security amount associated with the landscaping shall be retained by the City until: (1) all landscaping Property Improvements have been fully completed and accepted by the City, including all

corrective work and warranty punch list items being completed by the Developer;  
(2) all financial obligations to the City have been satisfied; and (3) the warranty period has expired.

**32. SUMMARY OF CASH REQUIREMENTS.** The following is a summary of the cash requirements under this Agreement which must be paid to the City prior to the execution of this Agreement by the City:

City Engineering and Administration Escrow	\$10,000
--	----------

<b>TOTAL CASH REQUIREMENTS:</b>	<b>\$10,000.00</b>
---------------------------------	--------------------

**33. NOTICES.** Required notices to the Developer shall be in writing, and shall be either hand delivered to the Developer, its employees or agents or mailed to the Developer by certified mail at the following address: 1875 South Greeley Street, Stillwater, MN 55082, Attention: Mark Drommerhausen, drommerhausenm@stillwaterschools.org. Notices may also be delivered to the Developer via email to the above email addresses, provided that a hard copy of the notice is also delivered by certified mail or hand delivery. Notices to the City shall be in writing and shall be either hand delivered to the City Administrator or mailed to the City by certified mail in care of the City Administrator, Nicole Miller, nmiller@lakeelmo.gov, at the following address: Lake Elmo City Hall, 3880 Laverne Avenue N, Lake Elmo, Minnesota 55042. Notices may also be delivered to the City via email to the above email address, provided that a hard copy of the notice is also delivered by certified mail or hand delivery.

**34. COMPLIANCE WITH LAWS.** The Developer agrees to comply with all laws, ordinances, regulations, and directives of the state of Minnesota and the City applicable to the Property. This Agreement shall be construed according to the laws of the state of Minnesota.

**35. SEVERABILITY.** In the event that any provision of this Agreement shall be held invalid, illegal, or unenforceable by any court of competent jurisdiction, such holding shall pertain only to

such section and shall not invalidate or render unenforceable any other provision of this Agreement.

**36. NON-WAIVER.** Each right, power, or remedy conferred upon the City by this Agreement is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, or available to the City at law or in equity, or under any other agreement. Each and every right, power, and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power, or remedy. If either party waives in writing any default or nonperformance by the other party, such waiver shall be deemed to apply only to such event and shall not waive any other prior or subsequent default.

**37. COUNTERPARTS.** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be an original and shall constitute one and the same Agreement.

**CITY OF LAKE ELMO**

By: \_\_\_\_\_  
Charles Cadenhead  
Its: Mayor

By: \_\_\_\_\_  
Julie Johnson  
Its: City Clerk

STATE OF MINNESOTA        )  
  ) ss.  
COUNTY OF WASHINGTON    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024, by Charles Cadenhead and Julie Johnson, the Mayor and City Clerk, respectively, of the City of Lake Elmo, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

\_\_\_\_\_  
NOTARY PUBLIC

**DEVELOPER**

By: \_\_\_\_\_

Alison Sherman

Its: Board Chair

By: \_\_\_\_\_

Katie Hockert

Its: Board Clerk

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this \_\_\_\_, day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the Board Chair and \_\_\_\_\_, the Board Clerk of Independent School District No. 834, Stillwater Area Public Schools, a Minnesota body corporate and politic on behalf of the district.

\_\_\_\_\_  
NOTARY PUBLIC

DRAFTED BY:  
City of Lake Elmo  
3880 Laverne Avenue North  
Lake Elmo, MN 55042  
(651) 747-3901



## **EXHIBIT A TO SITE IMPROVEMENT AGREEMENT**

### **Legal Description of Property Being Improved**

#### **Old Legal Description:**

##### **PARCEL A:**

The following parts of the North Half of the Northeast Quarter (N1/2 of NE1/4) of Section Thirty-six (36), Township Twenty-nine (29) North, Range Twenty-one (21) West described as follows: The East 666 feet of the said North Half of the Northeast Quarter and the West 234.9 feet of the East 900.0 feet of the South 891.8 feet, subject to public roadways along the North and East side thereof and containing 25 acres more or less together with a perpetual easement for utility purposes including but not limited to underground gas lines, electrical transmission lines, and drainage, said easement tract being the south 50 feet of the West 1,571.1 feet of the East 2,472.5 feet of the said North Half of the Northeast Quarter (N1/2 of NE1/4) of Section Thirty-six (36). (Description per Warranty Deed Doc. No. 212313)

##### **PARCEL B:**

All that part of the North Half of the Northeast Quarter (N1/2 of NE1/4) of Section Thirty-six (36), Township Twenty-nine (29) North, Range Twenty-one (21) West, described as follows: The West 732.68 feet of the East 1633.58 feet of the South 891.8 feet containing 15 acres more or less. (Description per Warranty Deed Doc. No. 218479)

#### **New Legal Description:**

Lot 1, Block 1, OAK-LAND MIDDLE SCHOOL ADDITION, according to the recorded plat thereof, Washington County, Minnesota.

# EXHIBIT B TO SITE IMPROVEMENT AGREEMENT

## Improvements Cost/Security Amount Estimate

<u>CONSTRUCTION CATEGORY</u>		<u>COST</u>	<u>125 percent</u>
1	<u>Grading</u>	\$280,000	\$350,000
2	<u>Sanitary Sewer</u>	NA	NA
3	<u>Watermain</u>	\$300,000	\$375,000
4	<u>Storm Sewer (includes pond structures and outfall pipes)</u>	\$938,000	\$1,172,500
5	<u>Sidewalks</u>	NA	NA
6	<u>Trails</u>	NA	NA
7	<u>Surface Water Facilities (ponds, infiltration basins, other BMPs)</u>	\$196,000	\$245,000
8	<u>Street Lighting</u>	NA	NA
9	<u>Street and Traffic Signs</u>	NA	NA
10	<u>Private Utilities</u>	NA	NA
11	<u>Landscaping Improvements</u>	\$70,000	\$87,500
12	<u>Tree Preservation and Restoration</u>	\$7,000	\$8,750
13	<u>Wetland Mitigation and Buffers</u>	NA	NA
14	<u>Monuments</u>	\$6,000	\$7,500
15	<u>Erosion and Sedimentation Control</u>	\$380,000	\$475,000
16	<u>County Roadway/Traffic Signals</u>	NA	NA
17	<u>Developer's Record Drawings</u>	\$15,000	\$18,750
<b><u>TOTALS</u></b>		<b>\$2,192,000</b>	<b>\$2,740,000</b>

## **FORM OF IRREVOCABLE LETTER OF CREDIT**

No. \_\_\_\_\_

Date: \_\_\_\_\_

TO: City of Lake Elmo

Dear Sir or Madam:

We hereby issue, for the account of \_\_\_\_\_ (Name of Developer) and in your favor, our Irrevocable Letter of Credit in the amount of \$\_\_\_\_\_ available to you by your draft drawn on sight on the undersigned bank.

The draft must:

- a) Bear the clause, "Drawn under Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_, of (Name of Bank)" \_\_\_\_\_;
- b) Be signed by the Mayor or City Administrator of the City of Lake Elmo.
- c) Be presented for payment at \_\_\_\_\_ (Address of Bank), on or before 4:00 p.m. on November 30, 20\_\_\_\_.

We hereby agree that all sight drafts drawn under and in conformity with the terms of this Letter of Credit will be duly honored if drawn and presented for payment together with the documents required herein to [INSERT NAME AND ADDRESS OF BANK AND CONTACT PERSON] if presented before \_\_\_\_\_ p.m. on or before the expiration date. Presentations may be made by certified mail, return receipt requested, or by Federal Express or any other recognized courier company.

This Letter of Credit shall automatically renew for successive one-year terms unless, at least forty-five (45) days prior to the next annual renewal date (which shall be November 30 of each year), the Bank delivers written notice to the Lake Elmo City Administrator that it intends to modify the terms of, or cancel, this Letter of Credit. Written notice is effective if sent by certified mail, postage prepaid, and deposited in the U.S. Mail, at least forty-five (45) days prior to the next annual renewal date addressed as follows: City Administrator, City Hall, 3880 Laverne Ave. N., Lake Elmo Minnesota 55042 and is actually received by the City Administrator at least thirty (30) days prior to the renewal date.

This Letter of Credit sets forth in full our understanding which shall not in any way be modified, amended, amplified, or limited by reference to any document, instrument, or agreement, whether or not referred to herein.

This Letter of Credit is not assignable. This is not a Notation Letter of Credit. More than one draw may be made under this Letter of Credit.

This Letter of Credit shall be governed by the most recent revision of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600.

We hereby agree that a draft drawn under and in compliance with this Letter of Credit shall be duly honored upon presentation.

BY: \_\_\_\_\_

Its \_\_\_\_\_