

RECREATION, LIBRARIES & AUTHORITIES COMMITTEE

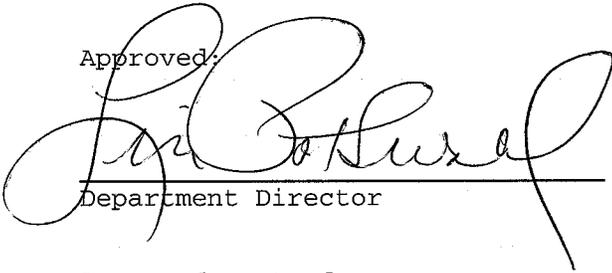
11-0061R

RESOLUTION AUTHORIZING MEMORIAL PARK AND LAURA MACARTHUR SCHOOL JOINT POWERS AGREEMENT WITH INDEPENDENT SCHOOL DISTRICT NO. 709 OF DULUTH.

CITY PROPOSAL:

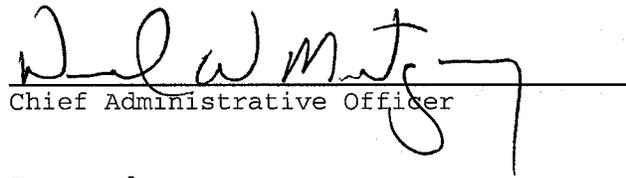
RESOLVED, that the proper city officials are hereby authorized to execute an agreement substantially the same as that on file in the office of the city clerk as Public Document No. _____ between the city of Duluth and Independent School District No. 709 of Duluth (ISD 709), by which the city and ISD 709 will use community development block grants to jointly plan, develop, and make improvements to the Memorial Park and Laura MacArthur School property for school, community and recreation purposes.

Approved:



Department Director

Approved for presentation to council:



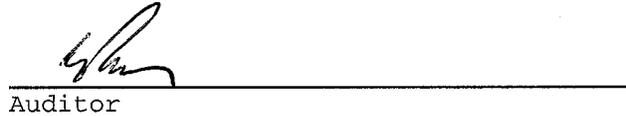
Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

P&R/ATTY SBH:dma 01/27/2011

STATEMENT OF PURPOSE: This resolution authorizes an agreement with the Duluth School District (ISD 709) by which the city and ISD 709 will jointly plan, develop, and make recreational improvements to the Memorial Park and Laura MacArthur School property. The joint agreement is for a 15 year term based on the estimated useful life of the playground equipment that will be installed.

**CITY OF DULUTH - INDEPENDENT SCHOOL DISTRICT NO. 709
JOINT POWERS AGREEMENT
LAURA MACARTHUR SCHOOL AND MEMORIAL PARK**

ARTICLE 1- PARTIES

THIS AGREEMENT, entered into this _____ day of _____, 2011, is by and between the CITY OF DULUTH, a municipal corporation of the County of St. Louis, State of Minnesota, (hereinafter "CITY"), and INDEPENDENT SCHOOL DISTRICT NO. 709 (hereinafter "SCHOOL DISTRICT").

ARTICLE 2 - PURPOSE AND PREMISES

- 2.1. Pursuant to Minnesota Statutes, Section 471.59, local government units and other governmental entities may enter into an agreement through the action of their respective governing bodies to jointly or cooperatively exercise any power common to the contracting parties or any similar powers.
- 2.2. The purpose of this Agreement is to facilitate the joint development by CITY and SCHOOL DISTRICT of the Memorial Park and Laura MacArthur School property through the use of a master plan and incremental phased projects to be constructed over a number of years.
- 2.3. CITY and the SCHOOL DISTRICT desire to make improvements to the Memorial Park and Laura MacArthur School property for education, community, and recreational purposes.
- 2.4. Said improvements will be implemented by SCHOOL DISTRICT and CITY over a period of years in planned phases involving funding by the CITY, SCHOOL DISTRICT, and Community Development Block Grants.
- 2.5. The CITY owns property known as the Memorial Park which is used for community and recreational purposes, and is depicted in Exhibit A and legally described as:

All of Block 1, except highway right-of-way, GRAND AVENUE DIVISION OF WEST DULUTH (1930-00030) and an unplatted triangular piece of land lying between the extended west line of Block 1; the northwesterly line of Grand Avenue and the south line of Lot 18, Block 1, GRAND AVENUE DIVISION OF WEST DULUTH (1930-00180); and All of Block 3, GRAND AVENUE DIVISION OF WEST DULUTH (1930-00370); and Lots 1 thru 7, Block 1, CENTRAL AVENUE DIVISION OF WEST DULUTH

(0430-00010); and Lots 7 thru 12, Block 155, WEST DULUTH FIFTH DIVISION (4510-06380); and All of Block 99 including vacated Elinor Street adjacent to Lots 6 thru 10, WEST DULUTH SIXTH DIVISION (4520-13770); and All of Block 100, WEST DULUTH SIXTH DIVISION (4520-13870).

- 2.6. The SCHOOL DISTRICT owns property known as the Laura MacArthur School, which is used for community education and recreational purposes, and is depicted in Exhibit A and legally described as:

All of Blocks 105 and 106, West Duluth 5th Division, including vacated alleys and Street: Vacation of Central Avenue Alley in Block 105 from the South line of Central Place to the North line of Elinor Street Vacation of Elinor Street from the West line of 54th Avenue West to the East line of Central Avenue Alley.

ARTICLE 3 - MASTER PLAN IMPLEMENTATION

- 3.1. The CITY and the SCHOOL DISTRICT shall cause to be developed a plan, known as the Memorial Park and Laura MacArthur School Master Joint Use Plan (hereafter referred to as the "PLAN"), for the development of the Memorial Park and Laura MacArthur School property.
- 3.2. The PLAN shall describe and include all improvements that are the subject of this AGREEMENT and may provide for the construction of these improvements in various phases over an extended period of time.
- 3.3. The PLAN shall be subject to approval by both the CITY and SCHOOL DISTRICT. The PLAN may include improvements to buildings and grounds on the site and may identify and allocate funding sources for these improvements and may identify which party is responsible for the construction of the improvement.
- 3.4. The PLAN shall be reviewed and approved in writing by the CITY and SCHOOL DISTRICT every five years from execution of this AGREEMENT. Any revisions or amendments to the PLAN shall be approved in writing by both the CITY and SCHOOL DISTRICT.
- 3.5. The parties shall implement the PLAN for development as set forth under the terms of the PLAN document. It is expressly understood by both parties that the development of each phase of the PLAN shall be subject to the availability of funds and that neither party shall be obligated to implement any phase of the PLAN at any time in which that party determines that there is a lack of funds for such implementation.

ARTICLE 4 - MAINTENANCE AND OPERATION

- 4.1. The SCHOOL DISTRICT grants the CITY and the CITY grants the SCHOOL DISTRICT permission to perform construction work and make installations of improvements to the Memorial Park and Laura MacArthur School property as are set forth in the Memorial Park and Laura MacArthur School Master Plan.
- 4.2. Each party shall be responsible for the maintenance, repair, and any utility or other operating costs of any improvement upon its own property constructed pursuant to the PLAN unless the parties agree to a different allocation in writing.
- 4.3. Each party shall not disturb or alter said improvements. If a party disturbs or alters said improvements, the party shall reimburse to the funding source of said improvement the depreciated value of said improvement at the time it is removed, disturbed or altered by the other party.
- 4.4. Each party shall be responsible for determining the usage and scheduling of the improvements that it has constructed pursuant to this AGREEMENT. Each party and the public shall be allowed to utilize all improvements to the extent that scheduling and maintenance allows such use. If improvements such as playgrounds or athletic fields overlap, the parties shall coordinate scheduling to maximize the use of the improvements.

ARTICLE 5 - TERM OF OCCUPANCY

- 5.1. This AGREEMENT shall run for a twenty (20) year period from the date of its execution and may be renewed for successive five year periods as provided herein.
- 5.2. This AGREEMENT shall terminate if not renewed by both parties in writing. This AGREEMENT does not automatically renew after expiration of the twenty (20) year period from the date of execution.
- 5.3. The parties shall meet and confer within ninety (90) days before each AGREEMENT term is to expire to renegotiate the terms and conditions of the AGREEMENT. This AGREEMENT may be renewed for subsequent five year periods upon written approval of both CITY and SCHOOL DISTRICT.

- 5.4. The parties shall meet and confer in a similar manner each subsequent five (5) year period within ninety (90) days of expiration, unless either party gives written notice of its intent not to renew this agreement.

ARTICLE 6 - INSURANCE

- 6.1. SCHOOL DISTRICT shall provide for purchase and maintenance of such insurance as will protect SCHOOL DISTRICT and the CITY against risk of loss or damage to the Laura MacArthur School property and any other property permanently located or exclusively used at the Laura MacArthur School property and against claims which may arise or result from the maintenance and use of the Laura MacArthur School property during the term of this Agreement.
- 6.2. SCHOOL DISTRICT shall procure and continuously maintain insurance covering all risks of injury to or death of any person(s) or entity(ies) or damage to property arising in any way out of or as a result of SCHOOL DISTRICT's occupancy of or use of the Laura MacArthur School property, carried in the name of the SCHOOL DISTRICT.
- 6.3. During the term of this Agreement, Lessee shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than \$1,500,000 aggregate per occurrence for personal bodily injury and death, and limits of \$1,500,000 for property damage liability and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance whether on or off the Memorial Park and Laura MacArthur School property. If person limits are specified, they shall be for not less than \$1,500,000 per person and be for the same coverages. The CITY shall be named as additional insureds thereon. All insurance shall be taken out and maintained in responsible insurance companies organized under the laws of the United States and licensed to do business in the State of Minnesota.
- 6.4. Certificates showing that SCHOOL DISTRICT is carrying such insurance in the specified amounts shall be furnished to the CITY prior to the execution of this Agreement. Insurance shall cover:
1. Public liability, including premises and operations coverage;
 2. Independent contractors--protective contingent liability;
 3. Personal injury;
 4. Owned, non-owned and hired vehicles, where applicable;
 5. Contractual liability covering the indemnity obligations set forth herein.

- 6.5. The CITY shall be named as Additional Insured under the Public Liability Policy, or as an alternate, SCHOOL DISTRICT may provide Owners-Contractors Protective policy, naming itself, and CITY. SCHOOL DISTRICT shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance. SCHOOL DISTRICT shall provide Certificates of Insurance evidencing the required insurance coverage. The certificates shall provide 30-days' notice of cancellation, non-renewal or material change provisions and shall further provide that failure to give such notice to CITY will render any such change or changes in said policy or coverage ineffective as against the CITY.
- 6.6. The use of an "Accord" form as a certificate of insurance shall be accompanied by two forms – 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) – or equivalent, as approved by the Duluth City Attorney's Office. Examples of such endorsements are available upon request.
- 6.7. The CITY does not represent or guarantee that these types or limits of coverage are adequate to protect SCHOOL DISTRICT's interests and liabilities.

ARTICLE 7 - TERMINATION OF AGREEMENT

- 7.1. This AGREEMENT may be terminated by either party upon breach of any of the terms and conditions of this AGREEMENT by either of the parties and the failure to rectify or correct any such breach within thirty (30) days of the transmission of written notice of the breach.
- 7.2. Upon termination of this Agreement, or unless otherwise agreed upon in writing by both parties, any installations, structures, and improvements made by the CITY on SCHOOL DISTRICT property shall be removed by CITY.
- 7.3. Upon termination of this Agreement, or unless otherwise agreed upon in writing by both parties, any installations, structures, and improvements made by the SCHOOL DISTRICT on CITY property shall be removed by SCHOOL DISTRICT.

ARTICLE 8 - LIABILITY

8.1. As Between the Parties

Each party hereto agrees that it will be solely liable for any liability arising out of any acts or omissions of itself or its officers, agents, servants, employees or subcontractors in the performance of its respective obligations under this Agreement.

8.2. Limitation of Liability

Nothing herein shall be deemed to create any liability on behalf of either party not otherwise existing as to such party under the provisions of Minnesota Statutes Chapter 466 or to extend the amount of liability of either party to amounts in excess of that specified in said Chapter.

8.3. Third Party Liability

Nothing herein shall be deemed to create any liability to any third party not otherwise existing under applicable law.

ARTICLE 9 - CIVIL RIGHTS ASSURANCES

9.1. SCHOOL DISTRICT and CITY, and their officers, agents, servants and employees as part of the consideration under this AGREEMENT, do hereby covenant and agree that:

9.1.1. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation and/or disability shall be excluded from any participation in, denied any benefits of or otherwise subjected to discrimination with regard to the work to be done pursuant to this AGREEMENT.

9.1.2. That all activities to be conducted pursuant to this AGREEMENT shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code and any regulations and executive orders which may be affected with regard thereto.

ARTICLE 10 - RULES AND REGULATIONS

Both parties agree to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and County and the City and their respective agencies which are applicable to their activities under this Agreement.

ARTICLE 11 - WAIVER

Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

ARTICLE 12 - APPLICABLE LAW AND VENUE

12.1. This AGREEMENT together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

12.2. The courts of the district of St. Louis County, Minnesota shall be the exclusive jurisdiction to hear any matter arising out of this AGREEMENT.

ARTICLE 13 - SEVERABILITY

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this AGREEMENT.

ARTICLE 14 - THIS IS THE ENTIRE AGREEMENT

It is understood and agreed that the entire AGREEMENT of the parties is contained herein and that this AGREEMENT supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this AGREEMENT shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

**IN WITNESS WHEREOF, the parties have hereunto set their hands
the day and date first above shown.**

**CITY OF DULUTH, a Minnesota
municipal corporation**

**INDEPENDENT SCHOOL
DISTRICT 709**

By: _____
Its Mayor

By: _____
Its School Board Chair

Attest:

By: _____
City Clerk

Countersigned:

City Auditor

Approved as to form:

City Attorney

