

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (hereinafter “Agreement”) is made and entered into this 25th day of May, 2023 (hereinafter “Effective Date”), by and between **BLOOMFIELD HILLS SCHOOLS**, a Michigan general powers school district, whose address is 7273 Wing Lake Road, Bloomfield Hills, Michigan 48301 (hereinafter referred to as the “School District”) and the **CHARTER TOWNSHIP OF WEST BLOOMFIELD PARKS AND RECREATION COMMISSION**, a Michigan municipal corporation, whose address is 4640 Walnut Lake Road, West Bloomfield, Michigan 48323 (hereinafter referred to as the “Commission”). The School District and the Commission may each be referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the School District is the owner of a certain parcel of surplus real property, commonly known as the former Pine Lake Elementary School site, located at 3333 West Long Lake Road, West Bloomfield, Michigan 48323 (the “Property”); and

WHEREAS, the Commission is desirous of utilizing the Property as a municipal/public park for the benefit of the community-at-large, including allowing standard park operations at the Property, i.e., events, classes, leagues, rentals, etc., all consistent with the Commission’s polices and park rules; and

WHEREAS, the School District and the Commission desire to work cooperatively and allow the Commission to utilize the School District’s Property to enhance the Property by repairing, improving and updating the site, including the athletic facilities and parking lot for the benefit of the School District, the Commission, its respective constituents and the community-at-large; and

WHEREAS, pursuant to Sections 11a(3) and (4) of the Revised School Code, MCL 380.1 *et seq.*, the School District as a general powers school district, has the authority to exercise a power incidental or appropriate to the performance of any function related to the operation of the School District in the interests of public elementary and secondary education in the School District and to enter into agreements or cooperative arrangements with other entities, or join organizations as part of performing the functions of the School District; and

WHEREAS, pursuant to the Intergovernmental Contracts between Municipal Corporations Act, 1951 PA 35, MCL 124.1, *et seq.*, each Party to this Agreement may enter into this Agreement in order to establish the terms and conditions upon which they cooperatively perform and carry out a service that they each may perform separately; and

WHEREAS, the School District and the Commission desire to enter into this Agreement to set forth the terms and conditions of their relationship and duties of the Parties.

NOW, THEREFORE, in consideration of the foregoing, One Dollar (\$1.00) per year during the Term of this Agreement and other good and valuable consideration herein contained the Parties agree as follows:

1. Purpose of Agreement: The purpose of this Agreement is to set forth the understanding of the School District and the Commission with respect to the Property and the various obligations each Party agrees to undertake as part of working cooperatively to carry out this Agreement. The Commission and School District agree to meet not less than annually and the Commission agrees to update the School District at such meeting(s) regarding the prior years' improvements and the Commission's plans for future capital improvements to the Property.

2. Term: The term of this Agreement shall commence on the Effective Date and continue for a period for approximately twenty (20) years and terminate on June 30, 2043 (the "Term"), unless terminated early pursuant to Paragraphs 13, 16, 22, 23 or 28 hereof. The Commission hereby acknowledges that it has no expectation of use of the Property beyond June 30, 2043.

3. Obligations of the Parties:

A. School District's Obligations:

- i. The School District, during the Term of this Agreement, shall assist the Commission with marketing its events to be held at the Property by including such information in its weekly updates to its community; and
- ii. The School District shall develop and distribute public messaging about the Property for the purpose of promoting the Property to members of the community-at-large.

B. Commission's Obligations:

- i. Within eighteen (18) months of the Effective Date of this Agreement, the Commission must:
 - a. Create and place signage on the Property along Long Lake Road, consistent with the Commission's signs at its other municipal parks, indicating that the Property is being used as a public park; and
 - b. Place porta johns on the Property or erect bathrooms, at the Commission's option; and
 - c. Make necessary repairs to the parking lot and all asphalt surfaces located on the Property; and
 - d. Update the tennis courts located on the Property; and

- e. Repair and grade the baseball field on the Property.
- ii. In addition to the requirements contained in Paragraph 3(B)(i) above, the Commission shall be solely responsible to maintain the Property in a good and safe condition and be required to make any and all necessary repairs/replacements/improvements to the Property throughout the Term of this Agreement, as reasonably required to keep same in its current condition, normal wear and tear excepted. The Commission shall be solely responsible for any and all costs and expenses related to the Property, including, but not limited to, trash removal, janitorial services, if required, lawn care, snow removal and utilities supplied to the Property, if any, as well as any and all other additional operational costs associated with the Property.
- iii. During the Term of this Agreement, the Commission may not construct or use the Property as follows:
 - 1. Build a pool on the Property; or
 - 2. Build a splash park on the Property; or
 - 3. Create a dog park on the Property; or
 - 4. Create a skate park on the Property.

4. Use of Property: The Commission shall use and occupy the Property as a municipal/public park for the benefit of the community-at-large, including allowing standard park operations at the Property, i.e., events, classes, leagues, rentals, etc., all consistent with the Commission's policies and park rules, and for no other purpose(s) without the prior written consent of the School District. The Commission shall not do or permit to be done any act or thing upon the Property that will increase the cost of casualty and liability insurance above the insurance costs normally associated with the Commission's principal activities as herein described. The Commission shall not use the Property or permit the Property to be used for the doing of any act or thing that constitutes a violation of any valid law, order or regulation of any governmental authority. The Commission shall not perform any acts or carry on any practices which may injure the Property or be a nuisance and shall keep the Property under its control clean and free from rubbish and dirt at all times. During the Term of this Agreement, the Parties shall use and occupy the Property under the following conditions:

- A. School District Priority: The Bloomfield Baseball League ("BBL") shall have priority over any other user to use the baseball field(s) located on the Property for its practices and games by giving the BBL first scheduling priority.

- B. Joint Use with the Commission and the General Public: At all times, other than the priority listed in Paragraph 4(A), the Property shall be available for use by the general public in accordance with the Commission's rules for its municipal parks.

5. Acceptance of the Property: The Commission acknowledges that it has examined the Property prior to the making of this Agreement and knows the conditions thereof. The Commission further acknowledges that no representation as to the condition or state of repairs thereof have been made by the School District or its agents which are not herein expressed. The Commission hereby accepts the Property in its present "AS IS" condition as of the Effective Date.

6. Alterations and Improvements: The Commission shall make and may make any and all alterations, additions, or improvements to the Property; however, the Parties acknowledge that the proposed plans for the Property are as described/depicted on Exhibit A attached hereto (the "Pine Lake Spatial Layout").

7. Utilities: The Commission shall pay for the cost of any and all utilities supplied to the Property during the Term. The School District shall not be responsible for any loss or interruption of utility services.

8. Environmental Warranty: The Commission represents, warrants and covenants to the School District the following:

- A. The Commission's use of the Property and its activities thereon shall comply with all "Environmental Laws," "Environmental Law(s)" means any federal, state or local law, statute, code, ordinance, regulation, rule, judgment, order, decree, injunction, permit or restriction or closure, post closure, or remediation plan approved by a government agency or entity, relating to the environment, waste, hazardous substances or hazardous materials and shall include without limitation, and as amended, the Asbestos Hazard Emergency Response Act, 15 USCS Sec. 2641 et seq., the Solid Waste Disposal Act, 42 U.S.C. Sec. 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq., the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1251 et seq., the Clean Air Act, 42 U.S.C. Sec. 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. Sec. 2601 et seq., the Safe Drinking Water Act, 42 U.S.C. Sec 300 et seq., the Rivers and Harbors Act, 33 U.S.C. Sec. 401 et seq., the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Sec. 11001 et seq., the Oil Pollution Act of 1990, 33 U.S.C. Sec. 2701 et seq., and the Michigan Natural Resources and Environmental Protection Act (MCL § 324.101 et seq.). This definition is intended by the Parties to be amended as the applicable Environmental Laws are amended or enacted during the Term.
- B. The Commission shall not disturb, generate, manufacture, refine, use, treat, store, handle, transport, remove, dispose, transfer, produce or process Hazardous

Substances on the Property. For purposes of this Agreement, "Hazardous Substances" shall mean any substance or material regulated under any Environmental Law. Notwithstanding the foregoing, the Commission may use pesticides, paint and similar products on or at the Property, as necessary for standard park maintenance, consistent with its standard park policies/practices; provided that, the Commission posts notices at the Property prior to use of the same.

- C. The Commission shall immediately and promptly notify the School District of any disturbance, release, discharge, spill or emission of Hazardous Substances on, to or from the Property, and any complaint, summons, citation, notice, directive, order, claim, litigation, judicial or administrative proceeding, inquiry or investigation judgment, letter or other communication from any governmental agency, department, bureau, office or other authority, or any third-party involving violations of any Environmental Law with respect to the Property.

9. Indemnification:

- A. General Indemnification. To the extent permitted by law, the Commission shall indemnify, defend and hold harmless the School District and its Board of Education, its Board members in their official and individual capacities, its administrators, employees, agents, contractors, successors and assigns, from and against any and all claims, counter claims, suits, debts, demands, actions, judgments, liens, liabilities, injuries, losses, costs, expenses and damages, including actual attorney's fees and actual expert witness fees, arising out of or in connection with the Commission's its agents', representatives', employees', contractors', licensees' and invitees' use and occupancy of the Property, from the negligence of the Commission, its agents', representatives', employees', contractors', licensees' and invitees' and/or from the Commission's its agents', representatives', employees', contractors', licensees' and invitees' violation of any of the terms of this Agreement. The indemnity obligations contained in this Paragraph shall survive the expiration or earlier termination of this Agreement and shall not be limited by the Commission's insurance obligations contained in this Agreement.
- B. Environmental Indemnification. To the extent permitted by law, the Commission shall indemnify, defend and hold harmless the School District and its Board of Education, its Board members in their official and individual capacities, its administrators, employees, agents, contractors, successors and assigns, from and against any and all fines, charges, penalties, losses, costs, damages, liabilities, injuries, cleanup or response activity costs and/or expenses (including attorneys' fees and consultants' fees) incurred by the School District as a result of any claims, demands, actions, causes of action, suits, proceedings, investigations, assessments and audits, whether of law or in equity (collectively "Claims") attributable to (i) any third party claim or demand in connection with any Hazardous Substances disturbed, generated, stored, leaked, spilled, discharged, emitted, or otherwise

disbursed, in, on, under, above or about the Property, or violation of any Environmental Laws, from and after the date of this Agreement; (ii) injuries sustained or other tort actions brought for Claims arising out of or related to any Hazardous Substances from and after the date of this Agreement; (iii) the presence, disposal (including off-site disposal), escape, leakage, discharge, emission, release or threatened release of any Hazardous Substances in, on, under, above, from or about the Property from and after the date of this Agreement; and (iv) compliance with, defense of, and response to any administrative notice, order, request or demand from any governmental entity or agency related to any Hazardous Substances on the Property or violation of any Environmental Laws from and after the date of this Agreement.

C. The Commission's indemnification described above specifically includes, but is not limited to, the direct obligation of the Commission to promptly perform any remedial or other activities required or ordered by any administrative agency or government official, or are otherwise necessary to avoid injury or liability to any person or property, to prevent the spread of any pollution and/or contamination, or to permit the continued safe use of the Property.

D. Notwithstanding anything herein to the contrary, nothing in this Agreement shall be construed to limit the School District's or the Commission's defenses and rights, including the right to assert a claim of governmental immunity. This Agreement does not and is not intended to impair, divest, delegate, or contravene any constitutional, statutory and/or other legal right, privilege, power, obligation, duty or immunity of the School District or the Commission.

10. The Commissions' Site Insurance. The Commission shall cause the Property and its improvements to be insured against loss or damage under a policy or policies of fire and extended coverage insurance, including "additional perils" in amounts acceptable to the School District.

11. The Commission's Personal Property Insurance: Any personal property kept on the Property by the Commission shall be insured at the Commission's sole risk, and the Commission shall acquire such policy or policies of insurance thereon as the Commission in its best judgment shall determine.

12. The Commission's General Liability Insurance: The Commission, at its sole cost and expense during the Term, shall maintain and keep in effect commercial general liability insurance in an amount not less than Five Million (\$5,000,000.00) Dollars per occurrence for bodily injury, personal injury, and property damage, or such other amounts as the School District may, from time to time, reasonably request. This policy shall be endorsed to name the School District as an additional insured. Any insurance carried by the School District shall be non-contributing and the Commission's insurance shall be primary to any such insurance carried by the School District. Such insurance obtained by the Commission shall be carried by an insurance

company or companies licensed to do business in Michigan and be on terms approved by the School District. The Commission shall deliver to the School District a certificate of insurance in compliance with its obligations hereunder, including a Thirty (30) notice of cancellation to the School District.

13. Default and Termination: If the Commission shall default in the performance of any covenant of this Agreement and shall not cure such default within fifteen (15) days after written notice from the School District specifying the default complained of (or, if such other default is of a nature that it cannot be cured within a fifteen (15) day period, and thereafter proceed diligently with the cure thereof) then in any such event the School District may terminate this Agreement at any time thereafter, if such default is not cured, by giving written notice of termination. Upon termination of this Agreement, the Commission may without further notice re-enter the Property and dispossess the Commission or any other occupant of Property and remove its effects and hold the Property as if this Agreement had not been made, saving and reserving to the School District any other remedies which the School District may have for the recovery of damages due or to become due by virtue of this Agreement or the breach thereof by the Commission. Any failure at any time by either of the Parties hereto to enforce any of the provisions of this Agreement shall not be construed as a waiver of such provisions nor of such Party's right to enforce the same upon any subsequent occasion or default

14. Bankruptcy: If the Commission shall file a petition in voluntary bankruptcy or be voluntarily or involuntarily adjudicated bankrupt or insolvent, or shall make an offer of composition to its creditors, or shall make an assignment for the benefit of creditors, or shall file a petition or answer seeking reorganization or readjustment under the federal bankruptcy laws or any other law or statute of the United States or any state thereof, or if a receiver or trustee shall be appointed for the Commission or for all or a substantial part of the property of the Commission and the Commission is not released from such receiver or trustee within thirty (30) days after appointment, or if an order shall be entered approving the reorganization of the Commission or the readjustment of the Commission's debts or obligations under the federal bankruptcy laws or any other law or statute of the United States or any state thereof, then any of such events shall be deemed to be a breach, default and anticipatory breach of this Agreement. In any of such events and whenever and as often as any such failure, default, breach or anticipatory breach shall occur, the term hereof, at the option of the School District, shall cease and determine and from thenceforth it shall be lawful for the School District to re-enter into and repossess the Property situated thereon and the Commission and each and every occupant to remove and put out and to relet said Property for its own benefit; but reserving to the School District all such rights as it may have for damages or otherwise because of said default, breach or anticipatory breach of the Commission.

15. Compliance with Laws: Each Party shall abide by and adhere to all applicable federal, state and local laws, rules, regulations and ordinances pertaining to the performance of any obligations under this Agreement.

16. Assignment: The Commission shall not assign, or in any manner encumber this Agreement, nor any part, right, or interest thereof, nor shall the Commission let or sublet or permit any part of the Property to be used or occupied by others for any reason whatsoever, without the

School District's advance written consent, which consent is discretionary in the School District solely. Notwithstanding the foregoing, this Paragraph is not intended to prohibit the Commission from renting portions of the park to individuals or groups as part of its standard rental process for its municipal/public parks. Any assignment, transfer, hypothecation, mortgage, or sub-letting without the prior written consent of the School District shall give the School District the right to terminate this Agreement and re-enter and repossess the Property.

17. Surrender of Property: Upon the expiration or earlier termination of this Agreement, the Commission shall quit and surrender the Property to the School District in good order and condition, ordinary wear and damage excepted; and the Commission shall remove all of its personal property, but all other improvements shall remain with the Property, and the Commission shall repair any damage to the Property or any of the School District's property, real or personal, caused by such removal.

18. Mechanics' Liens: The Commission shall pay all costs for construction done by it or caused to be done by it on the Property as permitted by this Agreement. The Commission shall keep the Property, its improvements, and the land of which the Property are a part, free and clear of all mechanics' liens resulting from construction done by or for the Commission.

19. Access to Property: The School District shall have the right to enter upon the Property at all reasonable hours for the purpose of inspecting the Property, preventing waste, loss, or destruction, removing obstructions, making such repairs or obligations as are necessary to protect the Property, performing any of its duties and obligations under the terms and conditions of this Agreement or to enforce any of the School District's rights or powers under this Agreement. The School District may show the Property to prospective tenants or purchaser at any time during the last year of the Term and during any period of default and/or extension of the Term.

20. Compliance: The Commission shall, at its own expense, under penalty of forfeiture and damages, promptly comply with all laws, orders, regulations or ordinances of all Municipal, County, State, and Federal authorities affecting use of the Property with respect to the cleanliness, safety, occupation, and use of same.

21. Challenge: The School District, although presently unaware of any such non-compliance, does not covenant that the Property is in compliance with applicable Municipal, County, State, and Federal laws, including, but not limited to, fire, safety, handicap, barrier free, zoning and use ordinances or laws and other governmental regulations relating to the use of the facility for the purpose intended through this Agreement. The Commission shall obtain any and all licenses, approvals and/or permits required for its use, occupancy and operation of the Property and shall promptly comply with all governmental orders and directives related thereto, all at its sole cost and expense.

22. Termination for Convenience: This Agreement may be terminated by either Party at any time and for any reason upon one (1) year advanced written notice to the other Party. Notwithstanding the foregoing, in the event that the Commission made major capital improvements to the Property, and if the School District elects to terminate for its convenience,

then upon request of the Commission, the School District shall reimburse the Commission for the pro-rata amount expended on such major capital improvements, on an amortized basis based on the use life of the improvement.

23. Right of First Refusal: If at any time during the Term of this Agreement, the School District desires to sell or otherwise transfer all or any portion of the Property, or enters into any arrangement whatsoever for the transfer of ownership of the Property, the School District shall deliver to the Commission written notice stating its intention to sell or otherwise transfer the Property and the Commission shall have the option and right to purchase the Property on the same terms and conditions offered by the School District to a third party purchaser or in an offer made by a third party purchaser to the School District. The Commission shall have the right and option for a period of thirty (30) days after receipt of said written notice to elect to enter into a Purchase Agreement with the School District for the Property. Exercise of this option shall be by written notice by the Commission to the School District. If the Commission does not elect to exercise such option within said thirty (30) day period, then the School District may sell or otherwise transfer the Property to a third party purchaser and this Right of First Refusal shall automatically terminate; provided, however, that if the School District does not close on the sale or transfer of the Property to a third party within one (1) year of the expiration of said thirty (30) day period, then this Right of First Refusal shall continue as to any subsequent proposed sales or transfers of Property. In the event of such a sale to the third party purchaser, this Agreement shall automatically terminate on the date of closing. Notwithstanding the foregoing, in the event that the Commission made major capital improvements to the Property, and if the School District closes on a sale of a property to a third party purchaser, then upon request of the Commission, the School District shall reimburse the Commission for the pro-rata amount expended on such major capital improvements, on an amortized basis based on the use life of the improvement.

24. Taxes and Special Assessments: If the Property is placed on the tax assessment rolls based upon the Commission's usage, then any real estate taxes, personal property taxes and/or special assessments assessed or levied against the Property during the Term shall be borne by the Commission as additional consideration.

25. No Waiver: The failure of either Party to enforce any covenant or condition of this Agreement shall not be deemed a waiver thereof or of the right of either Party to enforce each and every covenant and condition of this Agreement. No provision of this Agreement shall be deemed to have been waived unless such waiver be in writing.

26. Notices: All notices regarding this Agreement are to be in writing and delivered, or mailed by first class mail postage pre-paid, by one Party to the other Party at the Party's respective address set forth in the preface of this Agreement. Notices which are mailed shall be deemed to have been given as of the second business day following the date of mailing.

27. Heirs and Assigns: The covenants, conditions and agreements contained in this Agreement shall bind and inure to the benefit of the School District and the Commission and their respective successors and assigns, subject to the limitation on assignment as herein contained.

28. Condemnation: If all or a part of the Property is taken for any public or quasi-public purpose pursuant to any power of eminent domain, or by private sale in lieu of eminent domain, and such taking materially impairs the usability of the Property by the Commission, then either the School District or the Commission may terminate this Agreement, effective the date the public authority takes possession. All damages for the condemnation of the Property, or damages awarded because of the taking, shall be payable to the sole property of the School District.

29. Miscellaneous Provisions: The following miscellaneous provisions form a part of this Agreement:

A. Time is of the essence of each provision of this Agreement.

B. Consideration and all other sums payable under this Agreement must be paid in lawful money of the United States of America.

C. The unenforceability, invalidity, or illegality of any provision shall not render the other provisions unenforceable, illegal, or invalid.

D. This Agreement shall be construed and interpreted in accordance with the laws of the State of Michigan.

E. This Agreement contains all of the agreements of the Parties and cannot be amended or modified except by a written agreement.

F. The captions of this Agreement shall have no effect on its interpretation.

The Parties have caused this Agreement to be executed as of the day and year first above written.

SCHOOL DISTRICT:

BLOOMFIELD HILLS SCHOOLS

By: Patrick Watson

Its: Superintendent

COMMISSION:

**CHARTER TOWNSHIP OF WEST
BLOOMFIELD PARKS AND
RECREATION COMMISSION**

By: Robert Brooks

 06-23-2023

Its: Chairman

EXHIBIT A

PINE LAKE SPATIAL LAYOUT

