

AGREEMENT

BLACKHAWK PARK MAINTENANCE

THIS AGREEMENT is made and entered into on the 11th day of March, 2019 (the "Effective Date") by and between the City of Bellevue, Nebraska (the "City"), Sanitary and Improvement District No. 147 of Sarpy County, Nebraska (the "District") and the Blackhawk Homeowners Association, a Nebraska non-profit corporation (the "Association").

RECITALS

WHEREAS, the City of Bellevue is a city of the first class existing under the laws of the State of Nebraska; and

WHEREAS, the District is a sanitary and improvement district formed under the laws of the State of Nebraska; and

WHEREAS, the Association is a homeowner's association which serves the property and the property owners within the Blackhawk Subdivision; and

WHEREAS, the District comprises the single-family residential subdivision of Blackhawk which is located west of 25th Street and Blackhawk Drive the boundaries, lots and improvements of which are attached hereto as Exhibit "A"; and

WHEREAS, the District is the owner of a public park known as the Blackhawk Park (the "Park") which is located within the Lot 152, Blackhawk, a subdivision in Sarpy County, Nebraska, the boundaries of which are set forth in Exhibit "B" attached hereto; and

WHEREAS, the District owns and maintains the Park for the public; and

WHEREAS, the City has proposed to annex the District including the Park into the boundaries of the City; and

WHEREAS, by this Agreement, the City, the District and the Association set forth the maintenance, repairs and capital improvements for the Park allocated among the City and the Association upon annexation.

NOW THEREFORE in consideration of the mutual covenants and agreements, and for other good and valuable consideration, the City, the District and the Association hereby agree as follows:

1. The Boundaries of the District. Upon annexation, the boundaries of the District as set forth in Exhibit "A", including the Park, shall be within the boundaries of the City.

2. Park Maintenance and Repair. Upon annexation by the City, Blackhawk Park shall become a city public park. Upon annexation, the maintenance and repair of the Park and its improvements shall be as follows:

- a. Mowing, Turf Care, Fertilizer and Weed Control. Mowing, turf care, fertilizer and weed control for the Park shall be the responsibility of and provided by the Association at its cost.
- b. Creek Bank/Drainage Ditch/Maintenance/Repair. The creek bank and drainage maintenance relating to the creek bank/drainage ditch within the Park shall be maintained and repaired by the Association at its cost.
- c. Irrigation System Maintenance. The irrigation system maintenance shall be provided by the Association at its cost.
- d. Park Lighting Repairs. The Association will maintain the Park trail lighting at its cost.
- e. Tree Trimming and Maintenance. The City shall provide the Park tree trimming and maintenance at its cost.
- f. Park Bridge Repair and Maintenance. The City shall provide the Park bridge repair and maintenance for the 3 park bridges within the Park at its cost.
- g. Park, Trail and Sidewalk/Concrete Repair, Maintenance and Snow Removal. The City shall provide for the repair, maintenance and snow removal of the sidewalk and trails within the Park at its cost.
- h. Landscape Maintenance. The Association shall provide for the maintenance of the landscaping within the Park at its cost.
- i. MUD/Irrigation System Water Use. The Association shall pay MUD for the water use through the irrigation system to water the Park at its cost.
- j. OPPD/Park Lighting. The Association shall pay OPPD for the electricity use for Park lighting at its cost.
- k. OPPD/Front Entrance Lighting. The Association shall pay OPPD for the electricity charges for providing lighting to the entrance of Blackhawk at 25th Street at its cost.
- l. Park Trash Carts (Quantity 4). The City shall provide for new Papillion Sanitation trash carts to be utilized within the Park at its cost.

3. 25th Street Entrance Improvements. The Association will maintain the front entrance lighting and pay for the electricity to OPPD for the front entrance lighting and provide and pay for the mowing and turf care of the entrance. The City shall provide and pay for the snow removal of the sidewalks at the entrance of the subdivision.
4. Decorative Street Sign Maintenance. The Association shall pay for the maintenance and repair of the decorative street signs within the boundaries of SID 147.
5. City Annual Maintenance Payment to the Association. In consideration of the Association agreeing to assume the responsibility to maintain, repair and pay for the cost as set forth in paragraph 2 and 3 above, the City shall pay the Association \$15,000.00 per year for the years 2019, 2020 and 2021. Thereafter the \$15,000.00 annual payment shall be increased on an annual basis to reflect the increase in cost for the services being provided by the Association based upon the annual consumer price index (CPI) not to exceed 4% per annum with the base year to be 2021 (the "Annual Payment"). The Annual Payment for 2019 shall be due and payable upon the effective date of the annexation of the District and for all subsequent years the Annual Payment shall be made by January 15th of each year for that calendar year maintenance. The Association shall provide to the City within 30 days after the close of calendar year the invoices and evidence of payment for the cost incurred and paid for by the Association as set forth in this Agreement. The City shall have the right to audit those invoices and payments that relate to the services being provided under this Agreement.
6. Term of Agreement. This Agreement shall remain in full force and effect for a period of ten (10) years from the date hereof and thereafter this Agreement shall automatically renew for successive one (1) year periods unless the City or the Association provides written notice to the other party 90 days before commencement of the next successive one (1) year period that it is terminating the Agreement. Upon termination of the Agreement, the City and the Association shall agree on the allocation of the maintenance, repair and reconstruction responsibilities for the Park and the Entrance and if no agreement is reached, then each party shall be obligated to provide the maintenance, repair and reconstruction for the Park and the improvements within the Park and the Entrance pursuant to their responsibilities under the law.
7. Modifications to Agreement. Any modification or amendment of this Agreement, including termination as provided for in paragraph 6 of this Agreement, shall require a written agreement approved through formal action by the governing bodies of the City and the Association.
8. Indemnification. Each Party shall release, indemnify and hold harmless ("Indemnifying Party") each other Party ("Indemnified Party") and said Indemnified Party's officers, officials, employees, and agents, and each of them, from and against all losses, damages, liabilities, claims, costs, and expenses whatsoever arising out of or resulting from the negligence, acts, or omissions of the Indemnifying Party, or the officers, officials, employees, agents, or contractors of the Indemnifying Party.

9. Miscellaneous.

a. Incorporation of Recitals. The recitals set forth above are, by this reference, incorporated into and deemed a part of this Agreement.

b. No Administrative Entity. There shall be no separate legal or administrative entity created to administer this Agreement and, therefore, no separate budget established for such an entity.

c. Governing Law. The Parties shall conform to all existing and applicable state and federal laws, and all existing and applicable rules and regulations. Any dispute arising from this contractual relationship shall be governed solely and exclusively by Nebraska law except to the extent such provisions may be superseded by applicable federal law, in which case the latter shall apply.

d. Forum Selection and Personal Jurisdiction. Any dispute arising from this contractual relationship shall be solely and exclusively filed in, conducted in, and decided by the courts located in Sarpy County, Nebraska. As such, the Parties also agree to exclusive personal jurisdiction in the courts located in Sarpy County, Nebraska.

e. Entire Agreement. This Agreement and all exhibits and documents referenced herein, which are hereby incorporated and specifically made a part of this Agreement by this reference, express the entire agreement of the Parties and shall be binding upon the successors and assigns of the respective Parties. Accordingly, this Agreement supersedes any prior written or oral agreement or understanding between the Parties concerning the subject matter hereof.

f. Notices, Consents, and Approval. Unless expressly stated otherwise herein, all notices, requests, consents, approvals, authorizations, or other submissions required to be made by the Parties shall be in writing, whether or not so stated, and shall be deemed sufficient and served upon the other only if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

For City: City of Bellevue
Attn: City Clerk
1500 Wall Street
Bellevue, NE 68005

For Association: Blackhawk Homeowners Association
Attn: President
2920 Blackhawk Circle
Bellevue, NE 68123

Such addresses and contact persons may be changed from time to time upon written notice to the other Party.

g. Headings. The headings herein are inserted for convenience and reference only and in no way define or limit the scope of any provisions hereof.

h. Severability. In the event any portion of this Agreement may be held invalid, void, or illegal for any reason by a court of competent jurisdiction, any such holding shall in no way affect, impair, or invalidate any other provisions of this Agreement, and such other provisions shall remain in full force and effect as if the invalid, void, or illegal provision was never part of this Agreement.

i. Conflict of Interest. The Parties warrant to each other that they have not employed nor retained any company or person, other than a bona fide employee working solely for the Parties to this Agreement, to solicit or secure this Agreement, and that they have not paid or agreed to pay any company or person other than a bona fide employee working solely for the Parties, any fee, commissions, percentage, brokerage fees, gifts or other consideration, contingent upon or resulting from the award or making of this Agreement.

j. Representations. Each Party represents and warrants to the other that (a) it has all necessary right, power and authority to enter into this Agreement, and (b) the execution and delivery of this Agreement and the performance and observance of all obligations and conditions to be performed or observed by such Party have been duly authorized by all necessary action on behalf of such Party.

k. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will constitute one Agreement. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.

IN WITNESS WHEREOF, the Parties have executed this Agreement of the 11th day of March, 2019.

Attest:

CITY OF BELLEVUE

Susan Kluthe
City Clerk



Rusty Hike
Rusty Hike, Mayor

Attest:

SANITARY AND IMPROVEMENT DISTRICT
NO. 147 OF SARPY COUNTY, NEBRASKA

Richard Scofield
Richard Scofield, Clerk

Stacen Gross
Stacen Gross, Chairman

BLACKHAWK HOMEOWNER'S
ASSOCIATION, a Nebraska non-profit
corporation

Stacen Gross
Stacen Gross, President

EXHIBIT A – BLACKHAWK NEIGHBORHOOD SID 147 BOUNDARY MAP

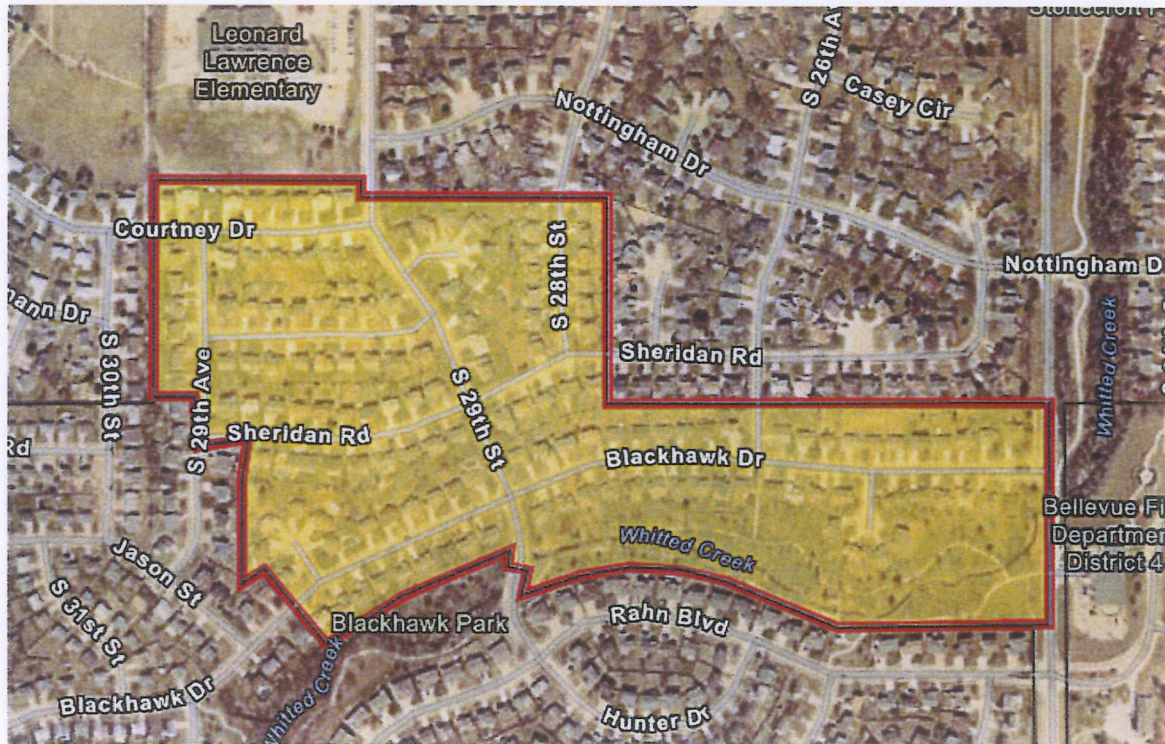


EXHIBIT B – BLACKHAWK PARK (LOT 152) BOUNDARY MAP

