



MAYOR AND COUNCIL COMMUNICATION

DATE: 10/18/2016

CONSENT

ITEM #: 9

AGENDA ITEM: Maintenance Agreement with Stillwater Twp. for Manning Ave. N

SUBMITTED BY: Rob Weldon, Public Works Director

THROUGH: Kristina Handt, City Administrator

REVIEWED BY: Kristina Handt, City Administrator

BACKGROUND:

Manning Ave. N from its intersection with MN State Hwy. 36, as it continues south to 5651 Manning Ave. N is a border road shared between the Township of Stillwater and City of Lake Elmo. Over the past years there has been no clear indication as to which municipality is responsible for maintenance and the road is in need of repairs. Because the city uses this road to access Well House #2 along with a Lake Elmo property owner adjacent to Well #2, public works has assumed minor maintenance items such as snow plowing, pot hole patching, and grading of the gravel to allow travel to and from the southernmost end of the road.

ISSUE BEFORE COUNCIL:

To consider entering into a Maintenance Agreement with Stillwater Township for maintenance and repair activities on Manning Ave. N from; 5651 Manning Ave. N to its intersection with MN State Hwy. 36

PROPOSAL DETAILS/ANALYSIS:

Under the terms of this Maintenance Agreement the City of Lake Elmo will perform maintenance and repairs to Manning Ave. N along the shared border of the two municipalities. Public Works will track the cost of maintenance in terms of materials, time, and equipment used. In January of each year the city will invoice the township for 50% of costs incurred and provide the township with a breakdown of maintenance activities performed.

FISCAL IMPACT:

Costs for the maintenance activities should be very minimal and covered under the Street Maint. Materials and Contract Services line items. There should be little to no increases in these line items as certain maint. and repairs have taken place in prior years.

OPTIONS:

Approve Maintenance Agreement with Stillwater Township

Deny Maintenance Agreement with Stillwater Township

Table Maintenance Agreement with Stillwater Township

RECOMMENDATION:

Staff respectfully recommends entering into a Maintenance Agreement with Stillwater Township for the portion of Manning Ave. N from the property of 5651 Manning Ave. N to the intersection with Hwy. 36

“Move to approve Road Maintenance agreement with Stillwater Township for the portion of Manning Ave. N from 5651 Manning Ave N to its intersection with Minnesota State Highway 36”

ATTACHMENTS:

Road Maintenance Agreement

ROAD MAINTENANCE AGREEMENT

This Agreement is made on this ____ day of _____, 2016, by and between the City of Lake Elmo, a Minnesota municipal corporation (the “City”) and Stillwater Township, a Minnesota political subdivision (the “Town”).

RECITALS

WHEREAS, Manning Ave North from 5651 Manning Avenue North, County of Washington, State of Minnesota northerly to its intersection with State Highway 36 (the “Road”) is a joint road situated in the Town and the City;

WHEREAS, Minnesota Statutes Section 164.14 indicates that towns and cities with a road on or along their shared boundary are to reach an equitable agreement on the maintenance and improvement of the boundary line road; and

WHEREAS, the above mentioned municipalities desire to enter into an Agreement regarding the costs of maintenance and improvements to Manning Ave North.

AGREEMENT

In consideration of the mutual promises and agreements contained herein, the parties do hereby agree as follows:

1. Vehicle and Pedestrian Access Easement. The Road shall be subject to a perpetual, nonexclusive easement for ingress and egress granting access to all the parcel owners along the Road and their occupants, agents, employees, guests, services, emergency and maintenance vehicles.

2. Utility Easement. The Road shall be subject to a perpetual, nonexclusive public utility easement for the purpose of permitting above and below ground public utilities to be installed and maintained.

3. Road Maintenance. The parties agree the maintenance of the Road shall be carried out in accordance with the following:

(a) Maintenance Activities. The City agrees to provide for the regular maintenance of the Road as though it was located entirely within the City and to provide the same level of maintenance it provides on its roads of similar condition and similar level of use. For the purposes of this Agreement, “regular maintenance” shall include, but is not necessarily limited to, inspecting, crack filling, minor road improvements, tree trimming, tree removal, snowplowing, sanding, signing, and removal of obstructions (e.g., a downed tree).

(b) Cost Share for Maintenance. The Town agrees to pay the City 50 percent of the costs the City incurs to provide regular maintenance on the Road. Regular maintenance costs shall be based on a time, material, and equipment rate set by City as applied to the time actually incurred to provide regular maintenance on the Road.

(c) Billing for the above mentioned services will be billed to the Town by the City in January of each year for costs that were incurred in the prior calendar year. The Town shall pay the invoice in full within 45 days of the date of the invoice.

4. Parking. For the safety of the residents, no machinery, trailers, vehicles, or other property may be stored or parked upon the Road except parking of vehicles for limited periods of time (not to exceed 12 hours).

5. No Guarantee. The Town understands and agrees that, given varying weather conditions and availability of resources, the City will endeavor to provide the regular maintenance services indicated herein on the Road, but the City does not represent, warrant, or guarantee that its work will meet any particular criteria or standards, or that it will be delivered within any particular time. The City will include the Road in its maintenance schedule and provide such regular maintenance activities in accordance with its usual policies and procedures.

6. Future Improvements. If either party proposes to improve the Road, such as through widening or rebuilding, with the expectation that the other party will share in the costs of the improvement project, the party proposing the project shall provide the other party at least 12 months' notice of the proposed project and obtain its written agreement to the cost share before undertaking the project. The written cost share agreement shall identify the scope of the project and shall identify which party will be responsible for letting the contract and for otherwise undertaking the project. Nothing in this Agreement shall limit or prohibit either party from undertaking an improvement project on the Road, provided the work is done at its own costs, does not damage the Road, and does not interfere with the terms or purposes of this Agreement. Any improvement project involving special assessments, or similar process of charging for the project costs, of owners in both communities shall require the prior mutual written agreement of the parties.

7. Delegation. Each party hereby delegates to the other party such authority as may be needed for the designated party to perform regular maintenance and to improve the Road in accordance with the terms of this Agreement.

8. Alteration or Vacation. The Road may only be altered (by means of acquiring additional right-of-way) or vacated by joint resolution of the parties.

9. Term and Termination. The term of this Agreement shall be for two years from the date indicated above and shall automatically renew for successive two-year terms on such date until it is terminated. Either party may terminate this agreement by providing the other party written notice of termination at least 90 days prior to the expiration of the then current term. The parties understand that Minnesota Statutes Section 164.14 requires an agreement as to the maintenance of line roads and so the party proposing to terminate must include a proposed alternative line road agreement with its notice to terminate. The parties agree to work in good faith to negotiate the terms of a new agreement prior to the termination of this Agreement.

10. Insurance. Both parties agree to maintain general liability insurance during the entire term of this Agreement. The package insurance policies offered by the self-insurance pools

established by their respective local government membership organizations shall constitute sufficient insurance coverage for the purposes of this Agreement.

11. Indemnification. The City agrees to indemnify and defend the Town from any claim or suit, and resulting costs (including defense costs) arising out of or related to the alleged negligent act or failure to act by the City, its officials, agents or employees in its performance of regular maintenance activities on the Road under this Agreement, unless such claim or suit is due to the alleged negligence of the Town. The party undertaking any future improvements on the Road shall be responsible for indemnifying and defending the other party against any claim or suit, and resulting costs (including defense costs) arising out of or related to its negligent act or failure to act related to the improvement project, unless such claim or suit is due to the negligence of the party not conducting the improvement project. To the extent a court considers this Agreement to constitute a joint venture or joint enterprise between the parties, any liability arising from or related to the activities contemplated by this Agreement shall be considered as against a single entity and shall not exceed the limit for a single entity as provided in Minnesota Statutes Section 471.59, subdivision 1a. Nothing in this section shall be construed as a waiver of any liability limits or immunities contained in Minnesota Statutes Chapter 466, nor as the acceptance by either party of the other party's liability for the purposes of Minnesota Statutes Section 471.59, subdivision 1a or otherwise.

12. Disputes. The parties mutually agree the terms of this Agreement constitute an equitable agreement for the purposes of Minnesota Statutes Section 164.14. However, if either party determines this Agreement has become inequitable, or if any other dispute arises regarding this Agreement, the parties will first meet to discuss the issues and use good faith efforts to resolve the disagreement. In the event the parties are not able to resolve the disagreement, and if the dispute involves the fairness of the division of costs or responsibilities under the Agreement, either party may submit the issue to the county board for a determination in accordance with Minnesota Statutes Section 164.14, subdivision 4. The parties may mutually agree to submit any other dispute to mediation for resolution, but if the parties do not agree to mediation or some other form of alternative dispute resolution, either party may seek relief in district court.

13. Modifications. Any alterations, amendments, deletions and waivers of the provisions of this Agreement shall be valid only when reduced to writing and duly signed by each party.

14. 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 as well as any previous line road agreements presently in effect between the parties concerning the Road.

15. Recording. Either party may record this Agreement in the office of the County Recorder or Registrar of Titles, but electing not to record this Agreement shall not affect its validity.

16. Governing Law. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

17. No Third Party Rights. This Agreement is solely for the benefit of the parties. This

Agreement shall not create or establish any rights in or for the benefit of any third party.

18. Executed in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

DRAFT

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of this ____ day of October, 2016.

Approval Signatures

City of Lake Elmo

Signature

Date

Mike Pearson, Mayor

Signature

Date

Julie Johnson, City Clerk

Township of Stillwater

Signature

Date

Name, Title

Signature

Date

Name, Title