



## STAFF REPORT

DATE: April 17, 2018

**CONSENT**

ITEM #: 16

**AGENDA ITEM:** 2018 Crack Seal Project and 2018 Seal Coat Project – Denmark Township Joint Services Agreement

**SUBMITTED BY:** Jack Griffin, City Engineer

**REVIEWED BY:** Kristina Handt, City Administrator  
Rob Weldon, Public Works Director  
Amanda Groh, Project Engineer

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**ISSUE BEFORE COUNCIL:** Should the City Council approve the Denmark Township Joint Services Agreement for the 2018 Crack Seal Project and 2018 Seal Coat Project?

**BACKGROUND:** Since 2012, the City of Lake Elmo has successfully contracted jointly for the annual street Seal Coat Project to share and reduce overall project costs. Through joint project efforts, the City of Lake Elmo, West Lakeland Township and, at times, Baytown Township, have been realizing project cost savings through an economy of scale and sharing in project expenses for preparation of plans and specifications, bidding, and construction administration. Under a joint contract, each jurisdiction pays its portion of the construction costs and shares in the engineering design, bidding and construction administration costs. The construction observation services are contracted directly by each jurisdiction. In addition, staff believes that by combining the project work for multiple communities, we can continue to promote a more favorable bidding environment that may result in lower overall construction costs.

**PROPOSAL DETAILS/ANALYSIS:** This year, Denmark Township has expressed interest in being included in both the Crack Seal and Seal Coat projects. Staff is recommending that the City work jointly with Denmark Township in 2018 to perform crack sealing and seal coating for routine maintenance of City and Township streets. Therefore, staff has prepared a Joint Services Agreement with Denmark Township in preparation of these projects. The agreement identifies the terms and conditions upon which the City of Lake Elmo prepares and administers a contract for the 2018 Crack Seal Project and the 2018 Seal Coat Project to be completed on streets within both the City and Township. The City of Lake Elmo is defined as the lead entity and prepares the plans and specifications with input from the Township. The City will solicit quotes for the 2018 Crack Seal Project and advertise for bids for the 2018 Seal Coat Project and enter into a contract with the City selected contractor for each project. Denmark will pay a fee to the City in the amount of \$1,000 for crack sealing and \$3,000 for seal coating to reimburse the City for the Township's share of the design, quoting/bidding and construction administration services related to the projects. The Township will reimburse the City within 30 days of receiving contractor invoices for the work performed on Denmark streets.

**FISCAL IMPACT:** Cost savings of \$4,000 in engineering and administration services. Staff believes that a unit price savings for the crack seal and seal coat work is also likely due to the economy of scale at the time of bid/construction.

**RECOMMENDATION:** Staff is recommending that the City Council approve, *as part of the consent agenda*, the Denmark Township Joint Services Agreement for the 2018 Crack Seal Project and the 2018 Seal Coat Project. If removed from the consent agenda, the recommended motion for this action is as follows:

*“Move to approve the Denmark Township Joint Services Agreement for the 2018 Crack Seal Project and the 2018 Seal Coat Project.”*

**ATTACHMENTS:**

1. Denmark Township Joint Services Agreement for the 2018 Crack Seal Project and the 2018 Seal Coat Project.

**JOINT SERVICES AGREEMENT FOR THE 2018 CRACK SEAL PROJECT  
& 2018 SEAL COAT PROJECT**

This Agreement is made this 8 day of March 2018, by and between Denmark Township (hereinafter referred to as "Denmark") and the City of Lake Elmo (hereinafter referred to as "Lake Elmo").

WHEREAS, it is the desire of the parties, and it is the purpose of this Agreement, that certain road-related services be performed or contracted by Lake Elmo on behalf of Denmark for the purpose of crack sealing and seal coating certain street segments as designated by Denmark;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the above parties hereto agree as follows:

1. Term: The term of this Agreement shall commence upon the date of execution and shall be for the duration of the one year warranty period for the 2018 Seal Coat Project.
2. Services. For the term of this Agreement, Lake Elmo shall provide Denmark with the following services in and on behalf of Denmark and at the direction of Denmark's Engineer:
  - a. Lake Elmo will provide professional engineering services to prepare Plans and Specifications and Contract documents for both the 2018 Crack Seal Project and the 2018 Seal Coat Project. The project will include crack sealing and seal coating of street segments located in Denmark, in addition to the street segments located in Lake Elmo for which Lake Elmo is otherwise contracting.
  - b. Prior to March 15, 2018, Denmark will provide Lake Elmo with a plan, designating and depicting the street segments to be crack sealed and seal coated in Denmark, said plan to be suitable for inclusion in the Plan documents, along with a tabulation of the estimated quantities (in square yards) showing the crack sealing and seal coating work to be performed in Denmark as a part of the project.
  - c. Lake Elmo will solicit quotes for the 2018 Crack Seal Coat Project and may award a contract for crack sealing, or a portion of thereof, as deemed in the best interests of Lake Elmo. If Lake Elmo awards a contract for the 2018 Crack Seal Project and Denmark agrees, the award shall include that portion of streets within Denmark.
  - d. Lake Elmo will advertise the 2018 Seal Coat Project for contractor bids and may award a contract for seal coating, or a portion of thereof, as deemed in the best interests of Lake Elmo. If Lake Elmo awards a contract for the 2018 Seal Coat Project and Denmark agrees, the award shall include that portion of streets within Denmark.

- e. Lake Elmo will provide professional engineering services for the construction administration of each contract.
- f. At its sole cost and expense, Denmark will provide a construction observer to inspect the crack seal and seal coat work performed on Denmark streets.

3. Payments. Denmark shall make payments to Lake Elmo for services related to the project or directly for services as follows:

- a. Denmark will pay Lake Elmo a fee in the amount of \$3,000 for engineering and administration fees performed by Lake Elmo for the seal coat project and \$1,000 for engineering and administration fees performed by Lake Elmo for the crack seal project. Lake Elmo will invoice each fee amount to Denmark once the Lake Elmo City Council accepts the bids and awards each respective construction contract.
- b. Lake Elmo will make Contractor payments for all work completed in accordance with each Contract. Denmark will reimburse Lake Elmo for the work completed and paid to the contractor in accordance with each contract for the actual quantities of work performed on Denmark streets.
- c. Lake Elmo will invoice Denmark for services to be reimbursed by Denmark as outlined above and will pay all invoices within 30 days after receipt of the invoice. Lake Elmo shall include with its invoices copies of the contractor's claims showing the amount charged for the work performed and materials used in Denmark.

4. Insurance. Lake Elmo shall require its contractor(s) to provide insurance as specified below, and Denmark shall be named as an additional insured on such insurance:

Comprehensive General Liability	\$1,000,000 per occurrence, \$2,000,000 aggregate
Auto Liability	\$1,200,000 per occurrence
Workers compensation	Statutory amount

5. Indemnification. Lake Elmo agrees to defend, indemnify and hold harmless Denmark agents and employees from and against all claims, actions, damages, losses and expenses, including attorneys fees, arising out of or resulting from Lake Elmo's performance of the duties required under this Agreement, provided that any such claim, action, damage, loss or expense is caused in whole or in part by an alleged negligent act, omission, or willful misconduct (including, but not limited to, a claimed breach of contract made by the contractor) of Lake Elmo. Lake Elmo agrees to require, as part of its contract with the contractor used to provide the seal coating, to include Denmark in the contractor's indemnification obligation under the contract. Denmark agrees to defend, indemnify and hold harmless Lake Elmo, and its officials, agents and employees from and against all claims, actions, damages, losses and expenses, including attorneys' fees, arising out of or resulting from Denmark's performance of the duties required of it under this Agreement, provided that any such claim, action, damage, loss or expense is caused in whole or in part by an alleged negligent act or omission or willful misconduct of Denmark. This provision shall not be construed as a waiver by either party of any defenses, immunities or limitations on liability to which

they are entitled, under Minnesota Statutes, Chapter 466 or otherwise. Under no circumstances shall a party be required to pay on behalf of itself and other parties, any amounts in excess of the limits of liability established in Minnesota Statutes, Chapter 466, applicable to any one party. The limits of liability for some or all of the parties may not be added together to determine the maximum amount of liability for any party.

6. Service Contract. This is a service contract. The parties do not intend to create, and nothing herein shall be construed as creating, a joint powers agreement, joint venture, or joint enterprise. However, to the extent a court of competent jurisdiction may find such a relationship exists, Lake Elmo and Denmark shall be considered a single governmental entity as provided in Minnesota Statutes, section 471.59, subdivision 1a for the purposes of determining total liability. The limits of liability for Lake Elmo and Denmark shall not be added together to determine the maximum amount of liability for either party or for any occurrence.

7. Contracting Procedure and Oversight. Lake Elmo shall be solely responsible for letting the contracts for the services to be provided hereunder in accordance with all applicable laws, rules, and regulations. The bonds obtained from the contractor for the work shall include the work to be performed in Denmark. Lake Elmo shall, to the extent reasonably necessary, assist Denmark to draw upon the performance bond as needed to complete or correct any work the contractor fails to perform in Denmark in accordance with the contract. Denmark will be responsible for inspecting the work to be performed in Denmark, but Lake Elmo shall be responsible for generally overseeing the contractor's performance of services in accordance with the contract.

8. Miscellaneous. This Agreement is solely for the benefit of the parties hereto and no other person shall have any right, claim, or interest in it.

9. Legal Compliance. Both parties agree to comply with all applicable state, federal and local laws, rules and regulations in carrying out their respective obligations under this Agreement.

10. Entire Agreement. This Agreement represents the entire agreement between Lake Elmo and Denmark and supersedes and cancels any and all prior agreements or proposals, written or oral, between the parties relating to the subject matter hereof. No amendments, addenda, alterations, or modifications to the terms and conditions of this Agreement shall be effective unless in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have set forth their hands on the day and year first written above.

**CITY OF LAKE ELMO**

By: \_\_\_\_\_  
Its Mayor

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Its City Administrator

\_\_\_\_\_  
Date

**TOWN OF DENMARK**

By: Kathleen J. Higgins  
Its Town Chairperson

3/8/18  
\_\_\_\_\_  
Date

By: Becky Klermon  
Its Town Clerk-Treasurer

3/8/18  
\_\_\_\_\_  
Date