



## STAFF REPORT

DATE: June 16, 2020

**CONSENT**

**AGENDA ITEM:** Settlement Agreement with Hamlet on Sunfish Lake HOA regarding Trails  
**TO:** Mayor and City Council  
**SUBMITTED BY:** Kristina Handt, City Administrator

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### **BACKGROUND:**

In 2019, the City filed suit in district court in order to make the trails in Hamlet on Sunfish Lake public consistent with the development agreement and plat approvals. Since that time the city and the HOA have come to an agreement to settle the matter and dismiss the lawsuit.

### **ISSUE BEFORE COUNCIL:**

Should the Council approve the settlement agreement with Hamlet on Sunfish Lake HOA regarding the trails?

### **PROPOSAL:**

The agreement included in your packet provides that:

Within sixty (60) days after the complete execution of this Agreement, unless the Parties mutually agree otherwise, the following shall occur:

- A. the City shall prepare easements for the trails depicted by the dashed line in the attached Exhibit A (the "Easements"). The Easements will grant the City the right to use, maintain, and repair the trails and allow their use by the public.
- B. the HOA shall sign the Easements and coordinate to get authorization from the Minnesota Land Trust for the Easements. Any problems with getting Minnesota Land Trust approval will be jointly addressed by the City and the HOA.
- C. The City shall file the Easements and assume responsibility for the filing fees.

When the city next updates its trail maps it will show the public trails as depicted on the attachment and the private HOA trails. The HOA will be allowed to place signs stating the trails are private. The City is responsible for maintenance of the public trails in the same manner it provides for maintenance on other public trails.

### **OPTIONS:**

- 1) Approve settlement agreement
- 2) Amend and then approve the settlement agreement
- 3) Do not approve the settlement agreement

### **RECOMMENDATION:**

If removed from the consent agenda:

***Motion to approve the settlement agreement with the Hamlet on Sunfish Lake HOA regarding the trails.***

### **ATTACHMENTS:**

- Settlement Agreement
- Exhibit A

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into as of this \_\_\_ day of June, 2020, by and among the following Parties:

- (1) City of Lake Elmo, Minnesota (“City”); and
- (2) Hamlet on Sunfish Lake Homeowner’s Association, Inc. (“HOA”).

The Plaintiff and Defendant together are the “Parties.”

### RECITALS

This Agreement is made and entered into with regard to the following facts:

**WHEREAS**, disputes have arisen between the Parties relating to the status of certain trails located in the City of Lake Elmo, Minnesota; and

**WHEREAS**, there is presently pending between the Parties in the Washington County District Court in the Tenth Judicial District (the “Court”) a lawsuit entitled *City of Lake Elmo v. Hamlet on Sunfish Lake Homeowner’s Association, Inc.*, 82-CV-19-1737 (the “Action”); and

**WHEREAS**, in order to avoid continued distraction and expense, the Parties are desirous of resolving their disputes, the Action, and all claims and counterclaims that were or could have been asserted by either of them against the other relating to the matters at issue in the Action;

**NOW, THEREFORE**, for the valuable consideration described below, the receipt and sufficiency of which hereby are expressly acknowledged, the Parties mutually agree as follows:

### TERMS

#### Recitals

1. The Recitals above are incorporated into and are material terms of this Agreement.

#### Transfers

2. Within sixty (60) days after the complete execution of this Agreement, unless the Parties mutually agree otherwise, the following shall occur:

- A. the City shall prepare easements for the trails depicted by the dashed line in the attached Exhibit A (the “Easements”). The Easements will grant the City

the right to use, maintain, and repair the trails and allow their use by the public.

- B. the HOA shall sign the Easements and coordinate to get authorization from the Minnesota Land Trust for the Easements. Any problems with getting Minnesota Land Trust approval will be jointly addressed by the City and the HOA.
- C. The City shall file the Easements and assume responsibility for the filing fees.

3. At the time of the City's next update of its trail maps and trail guides, to the extent such maps and guides identify public and/or private trails, the City shall identify the trails subject to the Easements as public and all other trails in the Hamlet on Sunfish Lake neighborhood as private. The HOA may erect signs designating the private trails and surrounding property as private. Any such signs must comply with the City's zoning code and all other applicable rules and regulations.

4. The City shall have responsibility for maintenance of the trails subject to the Easements and the acquisition of any appropriate insurance coverage of the same. This provision is intended to clarify the responsibility of the parties in relation to the trails subject to the Easements, and does not create any additional liabilities or responsibilities to either Party outside of those already existing at law and cannot be used as the basis of any claim against either Party.

### **Dismissal**

5. Within thirty (30) days after the complete execution of this Agreement, the Parties will enter into a Stipulation of Dismissal With Prejudice agreeing to dismiss the Action, and all claims and counterclaims that were or could have been asserted therein, with prejudice and on the merits, with each Party to bear its own costs, disbursements, and attorneys' fees. The Parties further agree to seek an order from the Court dismissing the Action in accordance with the terms of their Stipulation of Dismissal With Prejudice.

### **Other Provisions**

6. This Agreement and the exhibit thereto constitute the entire agreement of the Parties concerning the subject matter hereof. It may not be supplemented or changed orally.

7. No breach of any provision of this Agreement by any Party can be waived by the other Party, unless expressly done so in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provisions hereof.

8. The provisions of this Agreement are not severable.

9. The Parties and their respective counsel have reviewed this Agreement, and the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

10. Each Party acknowledges and represents that it has had the opportunity to consult with legal, financial, engineering, environmental, and other professional advisors as it deems appropriate in connection with its consideration and execution of this Agreement. Each Party further represents and declares that in executing this Agreement, it has relied solely upon its own judgment, belief, and knowledge, and the advice and recommendation of its own professional advisors, concerning the nature, extent and duration of its rights, obligations, and claims, and that it has not been influenced to any extent whatsoever in executing this Agreement by any representations or statements made by the other Party or its representatives, except those expressly contained or referred to herein.

11. This Agreement shall be binding upon, and shall inure to the benefit of, the successors and assigns of the Parties.

12. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Minnesota.

13. Any disputes or claims under this Agreement shall be submitted exclusively first to mandatory mediation before a mutually agreeable mediator prior to and as a condition of either Party's filing suit seeking relief in state or federal court. The Parties shall mediate in good faith until a resolution is reached or an impasse declared by the mediator.

14. This Agreement may be executed in counterparts, each of which shall be deemed to be one and the same instrument. The Parties shall exchange among themselves signed counterparts. A signature exchanged by email shall be effective as an original.



**THE CITY OF LAKE ELMO**

By \_\_\_\_\_  
Mike Pearson  
Mayor

By \_\_\_\_\_  
Julie Johnson  
City Clerk

**HAMLET ON SUNFISH LAKE  
HOMEOWNER'S ASSOCIATION, INC.**

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

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

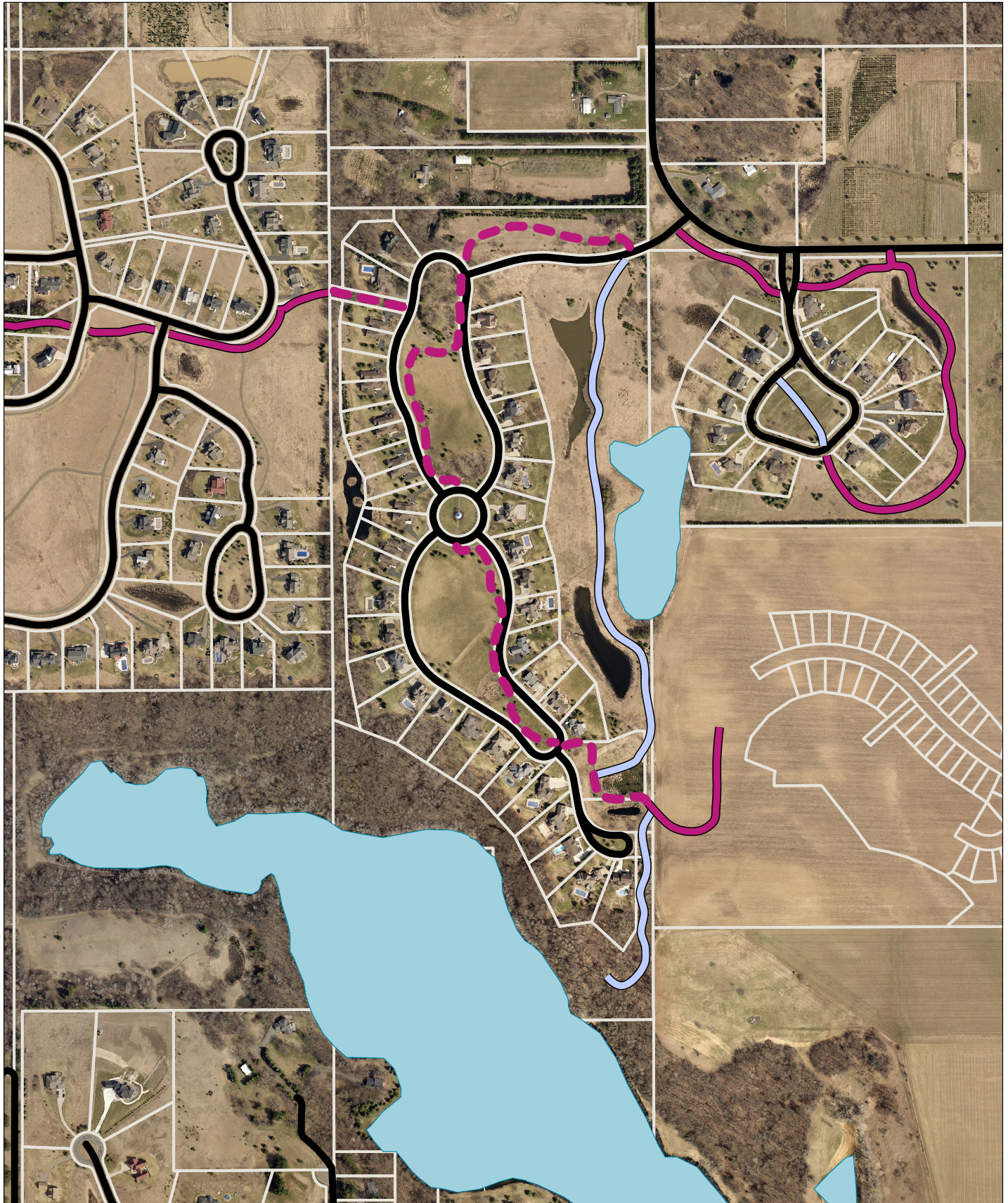
**Exhibit A – Trails Map**

(attached below)





# Hamlet on Sunfish Trails



## Trail Classification(s)

- |  |  |
|--|--|
|  City Trail         |  Roadway   |
|  Desired City Trail |  HOA Trail |