

**CITY OF SHAKOPEE/SPRING LAKE TOWNSHIP
ROAD MAINTENANCE AGREEMENT**

THIS AGREEMENT is made as of _____ by and between the City of Shakopee, Minnesota, hereinafter referred to as “City” and the Township of Spring Lake, Minnesota, hereinafter referred to as the “Township”.

RECITALS

The City and the Township desire to enter into an Agreement relating to the maintenance of 160th Street East referred to in this Agreement as “Street” located within the limits of the Township and the City beginning at Marschall Rd. and terminating at Baseline Ave. upon the terms and conditions set forth below.

NOW THEREFORE, in consideration of the mutual undertakings and agreement contained within this Agreement, the City and the Township hereby agree as follows:

1. **Scope of Services**

The Township’s and City’s respective maintenance responsibilities with respect to the Street are:

Township Responsibility

- A. The maintenance to be performed by the Township on the Street shall consist of the following:
 - 1. Maintain the Street so as to keep it smooth and in good repair for the passage of traffic and free from all obstructions and impediments to traffic. This includes, grading, graveling, washout repair and all snow removal/sanding operations in accordance with its adopted snow removal policy.
 - 2. Culvert replacement, as mutually agreed upon by the City and the Township.
 - 3. Furnish all labor, materials, supplies, tools and other items necessary for the performance of all and any of the work provided for in this Agreement.
- B. All materials used by the Township in the performance of its duties shall conform to the requirements of the Minnesota Department of Transportation Specifications for Construction, ~~2000~~ 2018 edition and all amendments and supplements thereto.
- C. The Township may partially block the Street subject to this Agreement for the period of time necessary for the performance of the services specified herein. In cases of emergency, the Street may be wholly blocked to prevent passage of traffic. At no time, however, shall the Township continue to obstruct the free passage of traffic on the Street for a longer period of time

than is reasonably required for making the necessary repairs. The township may also close said street at such time as is necessary for the repair or installation of water or gas mains, electric or telephone cables, or sewers. Except in cases of emergencies, the Township shall first give the City ten (10) days written notice and obtain a permit from the City before commencing or allowing commencement of such installation or repairs. The Township shall provide a suitable detour at any time it is necessary to close or totally block traffic from using said Street.

All partial and total closures of the Street shall be carried out in conformance with the Minnesota Manual on Uniform Traffic Control Devices, ~~and the current edition of Appendix "B".~~

City Responsibility

- A. The maintenance to be performed by the City on the Street shall consist of the following:
 - 1. The City shall be responsible for ditch mowing, brush clearing and culvert cleaning/steaming.
 - 2. Maintain all traffic control devices as may be necessary in accordance with ~~UMTC~~MMUTCD.
 - 3. Furnish all labor, materials, supplies, tools and other items necessary for the performance of all and any of the work provided for in this Agreement.
- B. All materials used by the City in the performance of its duties shall conform to the requirements of the Minnesota Department of Transportation Specifications for construction, ~~2000~~2018 edition and all amendments and supplements thereto.
- C. The City may partially block the Street subject to this Agreement for the period of time necessary for the performance of the services specified herein. In cases of emergency, the Street may be wholly blocked to prevent passage of traffic on the Street for a longer period of time than is reasonably required for making the necessary repairs. The City may also close said street at such time as is necessary for the repair or installation of water or gas mains, electric or telephone cables, or sewers. Except in cases of emergencies, the City shall first give the Township ten (10) days written notice allowing commencement of such installation or repairs. The City shall provide a suitable detour at any time it is necessary to close or totally block traffic from using said Street.

All partial and total closures of the described Street shall be carried out in conformance with the Minnesota Manual on Uniform Traffic Control Devices, ~~and the current edition of Appendix "B".~~

2. **Compensation**

Township Compensation

The City shall pay the Township ~~\$4,500~~7,878.00 per year for its grading, graveling, washout repair and all snow removal/sanding operations. The Township shall submit an invoice to the authorized agent of the City in January of each year for annual maintenance services to be performed during that year. The authorized agent shall have the authority to review the invoice, and no payment shall be made without the approval of authorized agent. Payment shall be made within thirty (30) days after receipt of invoice as acceptance for services to be performed.

The City and the Township agree that the road will be reshaped and graded every 2 to 3 years in the manner recommended by the road grader and agreed upon by the City and the Township and the area to be reshaped and graded will be shown on a map or the City and Township will meet on site. If additional activity outside of normal maintenance needs to be undertaken, the City and Township will meet to determine what action should be taken. However, if there is an emergency where public safety is at stake, the Township shall have the authority to incur expenses out of the ordinary course without notice to the City. The Township shall, in such event, provide the City with as much notice as it is able, and shall after such expenditure is authorized and undertaken, provide the city with all information and documentation reasonably necessary for the City to evaluate and understand the same.

With respect to culvert replacement, the City will reimburse the Township for one-half (1/2) the replacement costs including, but not limited to, all labor and materials. The Township shall submit an invoice to the authorized agent of the City for the services performed. The authorized agent shall have the authority to review the invoice, and no payment shall be made without the approval of authorized agent. Payment shall be made within thirty (30) days after receipt of invoice as acceptance for services to be performed.

All services provided by the Township pursuant to this Agreement shall be performed to the satisfaction of the City, and in accordance with all applicable federal, state and local laws, ordinances, rules and regulations. Any disputes relating to payment for services shall be handled pursuant to paragraph 23 of this Agreement.

City Compensation

The Township shall reimburse the City for one-half (1/2) the cost of its maintenance of the road. The City shall submit an invoice to the authorized agent of the Township for the services performed. The authorized agent shall have the authority to review the invoice, and no payment shall be made without the approval of authorized agent. Payment shall be made within thirty (30) days after receipt of invoice as acceptance for services to be performed.

All services provided by the City pursuant to this Agreement shall be performed to the satisfaction of the Township, and in accordance with all applicable federal, state and local laws, ordinances, rules and regulations. Any disputes relating to payment for services shall be handled pursuant to paragraph 23 of this Agreement.

4. **Effective Date of Contract**

This Agreement shall be effective beginning ~~July 1, 2013~~December 17, 2019.

5. **Term of Contract**

This Agreement shall remain in effect until ~~July 1, 2018~~ December 16, 2024 or until all obligations set forth in this agreement have been satisfactorily fulfilled or unless earlier terminated as provided, whichever comes first.

6. **Authorized Agents**

City of Shakopee shall appoint an authorized agent for the purpose of administration of this Agreement. The Township is notified of the authorized agent of City of Shakopee as follows:

~~Michael Hullander~~ Bill Egan
Public Works Superintendent
City of Shakopee
400 Gorman Street
Shakopee, MN 55379
952-233-9550

The City of Shakopee is notified the authorized agent for the Township is as follows:

~~Kathy Nielsen~~ Melissa Hanson
Clerk
Spring Lake Township
20381 Fairlawn Avenue
Prior Lake, MN 55372-9325
952-492-7030

7. **City and State Audit**

Pursuant to Minn. Stat. Section 16C.05, Subd. 5 (1998), the books, records, documents, and accounting procedures and practices of the Township relative to this Agreement shall be subject to examination by the City and the State Auditor. Complete and accurate records of the work performed pursuant to this Agreement shall be kept by the Township for a minimum of six (6) years following termination of this Agreement for such auditing purposes. The retention period shall be automatically extended during the course of any administrative or judicial action involving the City of Shakopee regarding matters to which the records are relevant. The retention period shall be automatically extended until the administrative or judicial action is finally completed or until the authorized agent of the County notifies the Township in writing that the records need no longer be kept.

8. **Indemnity**

Both parties to this Agreement recognize each other as a political subdivision of the State of Minnesota. Each party mutually agrees to indemnify, defend and hold harmless the other from any claims, losses, costs, expenses or damages resulting from the acts or omissions of the respective officers, agents, or employees relating to activities conducted

by either party under this clause shall be limited in accordance with the statutory tort liability limitation as set forth in Minnesota Statutes Chapter 466.04 to limit each party's total liability for all claims arising from a single occurrence, include the other party's claim for indemnification, to the limits prescribed under Minnesota Statutes Chapter 466.04.

9. **Insurance**

The Township shall maintain public liability coverage protecting itself, its Board, officers, agents, employees and duly authorized volunteers against any usual and customary public liability claims in amounts which shall, at a minimum, comply with Minn. Stat. 466.04 and Workers' Compensation and shall be in accordance with the Minnesota statutory requirements. Said policies shall be kept in effect during the entire term of this Agreement.

10. **Subcontractors**

The Township shall not subcontract any portion of the work to be performed under this Agreement nor assign this Agreement without the prior written approval of the authorized agent of the City. The Township shall ensure and require that any subcontractor agrees to and complies with all the terms of this Agreement. Any subcontractor of the Township used to perform any portion of this Agreement shall report to and bill the Township directly. The Township shall be solely responsible for the breach, performance or nonperformance of any subcontractor.

11. **Force Majeure**

City and the Township agree that the Township shall not be liable for any delay or inability to perform this Agreement, directly or indirectly caused by or resulting from strikes, labor troubles, accidents, fire, flood, breakdowns, war, riot, civil commotion, lack of material, delays of transportation, acts of God or other cause beyond reasonable control of the Township and the City.

12. **Data Practices**

The Township, its agents, employees and any subcontractors of the Township in providing all services hereunder, agree to abide by the provisions of the Minnesota Government Data Practice Act, Minn. Stat. Ch. 13, as amended, and Minn. Rules promulgated pursuant to Ch. 13. The Township agrees to indemnify and hold the City, its officers, department heads and employees harmless from any claims resulting from the Township's unlawful disclosure or use of data protected under state and federal laws.

13. **Termination**

This Agreement may be terminated by either party, with or without cause, upon 60 days written notice to the Township or the Authorized Agent of the City.

14. **Independent Contractor**

It is agreed that nothing contained in this Agreement is intended or should be construed as creating the relationship of a partnership, a joint venture, or an association with the City and the Township. The Township, its employees, agents, subcontractors nor representatives shall be considered employees, agents or representatives of the City. Except as otherwise provided herein, the Township shall maintain, in all respects, its present control over the means and personnel by which this Agreement is performed. From any amounts due the Township, there shall be no deduction for federal income tax or FICA payments nor for any state income tax, nor for any other purposes which are associated with an employer/employee relationship unless otherwise required by law. Payment of federal income tax, FICA payments, state income tax, unemployment compensation taxes, and other payroll deductions and taxes are the sole responsibility of the Township.

15. **Notices**

Any notices to be given under this Agreement shall be given by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, addressed to the Township at its address stated herein, and to the authorized agent of the City at the address stated herein.

16. **Controlling Law**

The laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the herein parties and performance under it. The appropriate venue and jurisdiction for any litigation hereunder will be those courts located with the County of Scott, State of Minnesota. Litigation, however, in the federal courts involving the herein parties will be in the appropriate federal court within the State of Minnesota. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

17. **Successors and Assigns**

The City and the Township, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this agreement. Neither the City nor the Township shall assign, sublet, or transfer any interest in this agreement without the prior written consent of the other.

18. **Equal Employment and Americans with Disabilities**

In connection with the work under this Agreement, the Township agrees to comply with the applicable provisions of state and federal equal employment opportunity and nondiscrimination statutes and regulations. In addition, upon entering into this Agreement, the Township certifies that it has been made fully aware of City of Shakopee's Equal Employment Opportunity and Americans with Disabilities Act Policy,

that it supports this policy and that it will conduct its own employment practices in accordance therewith. Failure on the part of the Township to conduct its own employment practices in accordance with City Policy may result in the withholding of all or part of regular payments by the City due under this Agreement unless or until the Township complies with the City policy, and/or suspension or termination of this Agreement.

19. **Changes**

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as for this Agreement.

20. **Separability**

In the event any provision of this agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties unless such invalidity or non-enforceability would cause the agreement to fail its purpose. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

21. **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 agreements presently in effect between the City and the Township relating to the subject matter hereof.

22. **Third Parties**

This Agreement is solely between the Township and the City as the only parties and no provision of this Agreement shall in anyway inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of this Agreement or of any one or more of its terms, or otherwise give rise to any cause of action in any person not a party to this Agreement.

23. **Disputes and Remedies**

The Township and City agree as follows:

- a. **Negotiation**-If a disagreement over interpretation of any provision of this Agreement should arise, the City and the Township will direct staff members, as they deem appropriate, to meet at least one (1) time at a mutually convenient time and place to attempt to resolve the dispute through negotiation.

- b. **Mediation**-If the parties to this Agreement are unable to resolve disputes, claims or counterclaims, or are unable to negotiate an interpretation of any provision of this Agreement, the parties shall seek relief by submitting their respective grievances to mediation.
- c. **Adjudication**-If the parties to this Agreement are unable to resolve disputes, claims or counterclaims after submitting their respective grievances to mediation, either party may seek relief through initiation of an action in a court of competent jurisdiction.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

TOWNSHIP OF SPRING LAKE

By _____
Its Clerk

By _____
Its Chairperson

CITY OF SHAKOPEE

By _____
Its Mayor

By _____
Its City Administrator