

City of Hastings

To: Mayor Hicks and City Councilmembers
From: Tom Montgomery
Date: October 15, 2013
Re: Dakota County Storm Sewer Maintenance Agreement

Council Action Requested:

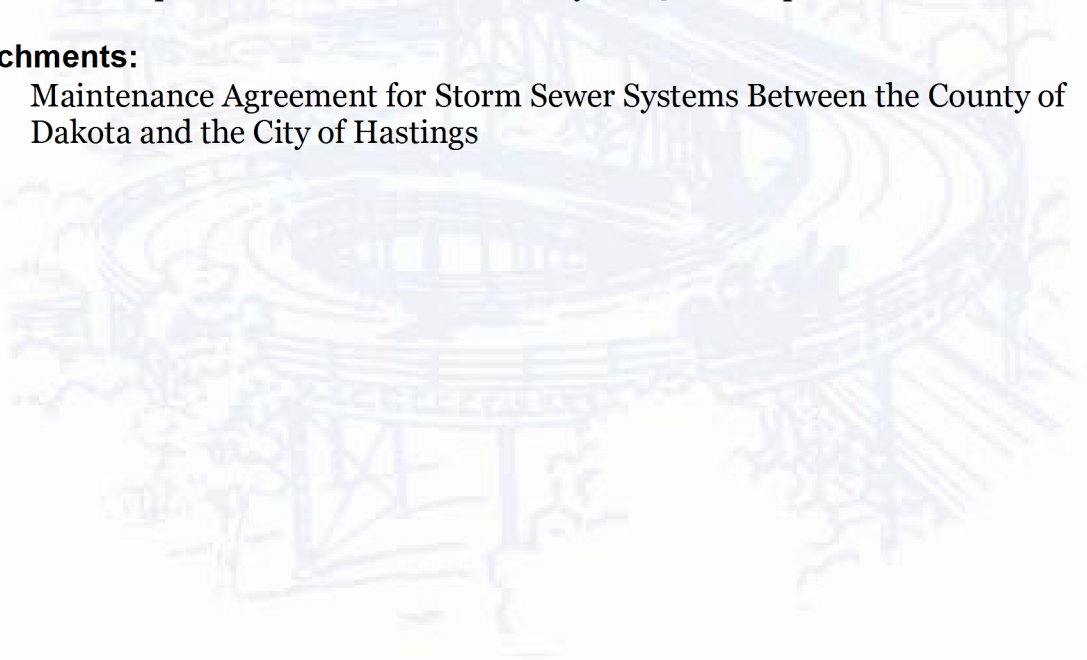
Council is requested to approve the enclosed Dakota County Storm Sewer Maintenance Agreement.

Background Information:

The enclosed agreement better defines storm sewer maintenance responsibilities on County highways within cities, and provides for more equitable cost sharing for both new storm sewer construction and repair of existing storm sewers. The agreement was negotiated between the Dakota County Transportation Department and the 11 cities with populations > 5,000, as part of the new policies included in the County's 2030 Transportation Plan.

Attachments:

- Maintenance Agreement for Storm Sewer Systems Between the County of Dakota and the City of Hastings



**MAINTENANCE AGREEMENT FOR STORM SEWER SYSTEMS
BETWEEN THE COUNTY OF DAKOTA AND
THE CITY OF HASTINGS**

THIS AGREEMENT is made and entered into by and between the County of Dakota, hereinafter referred to as "County", and the City of Hastings, hereinafter referred to as "City".

WHEREAS, the parties desire to enter into an Agreement relating to the maintenance of Storm Sewer Systems located on County highways within the corporate limits of the City; and

WHEREAS, the City has the authority to execute this Agreement as a binding legal obligation, fully enforceable in accordance with its terms and conditions as shown by the attached City Council Resolution; and

WHEREAS, the County has the authority to execute this Agreement as a binding legal obligation, fully enforceable in accordance with its terms and conditions as shown by the attached County Board Resolution No. 13-445.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein the parties agree as follows:

1. Purpose. The purpose of this Agreement is to define the rights and obligations of the parties with respect to the maintenance and repair of Storm Sewer Systems, in accordance with the Dakota County 2030 Transportation Plan, as adopted by the County Board of Commissioners on June 19, 2012, as that Plan may be amended from time to time, hereinafter referred to as "Transportation Plan". For purposes of this Agreement, "Storm Sewer Systems" means existing or future storm sewer systems under or along County highways, within County highway right of way, and outside County highway right of way which conveys or receives drainage from County highways, within the corporate limits of the City. Storm Sewer Systems include but are not limited to: catch basins, castings, pipes, manholes, control structures, outlet pipes, and end treatments. This Agreement supersedes all previously executed joint powers agreements relating to maintenance of Storm Sewer Systems on County highways within the City.

2. Term. This Agreement shall be in force and effect from the date of execution by all parties and shall continue in effect until terminated in accordance with the provisions herein.
3. Termination. This Agreement may be terminated by either party upon one-year written notice and execution of a subsequent maintenance agreement for Storm Sewer Systems agreeable to both parties. Termination of this Agreement shall not discharge any liability, responsibility or right of any party which arises from the performance of or failure to adequately perform the terms of this Agreement prior to the effective date of termination. Nor shall termination discharge any obligation, which by its nature, would survive after the date of termination.
4. Construction of New Storm Sewer Systems. New Storm Sewer Systems may be constructed by the County or the City. Any design cost and construction cost responsibilities between the parties for a new Storm Sewer System will be determined according to each specific future project agreement. Design plans and specifications shall be duly approved by the representative of the County and City prior to future construction of any new Storm Sewer System covered by this Agreement.
5. Commencement of Maintenance. Maintenance of all existing Storm Sewer Systems will commence in accordance with the terms and conditions of this Agreement upon execution of this Agreement. Maintenance of new Storm Sewer Systems constructed by the County or the City will commence in accordance with the terms and conditions of this Agreement upon completion of construction and final payment to the contractor.
6. Non-Compensatory Routine Maintenance Terms. In accordance with the Transportation Plan, as it may from time to time be amended, the routine maintenance terms are as follows:
 - a. *City Routine Maintenance.* The City shall be responsible, at its sole cost, for routine maintenance of Storm Sewer Systems. Routine Maintenance is defined as: periodic inspections as determined and at a method chosen by the City, and cleaning and sediment removal from inside structures and pipes.
 - b. *County Routine Maintenance.* The County shall be responsible, at its sole cost, for the following:
 - i. Cleaning gutters and storm sewer inlet (catch basin) grates within the County right of way.

- ii. Cleaning drainage ditches and culverts within County right of way.
- iii. Street sweeping or other cleanup methods as necessary on all County highways and for any illicit discharge into the Storm Sewer System from the County highway.

7. Compensatory Maintenance Terms.

a. *Inclusion in County 5-Year Capital Improvement Plan (CIP).* For Storm Sewer System repair work to be eligible for County cost participation, projects must be included in the County's CIP. Generally, necessary Storm Sewer System repairs shall be made at the time of pavement resurfacing, road rehabilitation, or other improvement project identified in the County's CIP.

- i. *Cost Participation.* The County and the City shall share the cost of repairs to catch basins and pipes connecting catch basins on County highways to mainline pipes at a rate of 80% and 20%, respectively.

The cost of repairs to mainline pipes and storm water treatment systems including manholes, pipes, control structures, outlet pipes, end treatments and detention and retention ponds shall be shared based on contributing flows. A rate of 20% County, 80% City may be used to approximate the contributing flows, or another method may be used to define a more exact rate if the County and City mutually agree prior to completing the work.

- ii. *Plans.* The City shall be responsible for inventorying and identifying necessary Storm Sewer System repairs and preparing plans and specifications for the County's review and incorporation into the County Project plans. To the extent practicable, the County shall provide 12 months advance notice of such projects. The Storm Sewer System repairs shall be in accordance with City standards unless the City and County mutually agree on alternative repair specifications. By submitting a written request from the Authorized Representative, the City agrees to pay their share of Project costs in accordance with this Agreement.
- iii. *Inspection.* The City shall be responsible for reasonable, on-site inspection during installation of new Storm Sewer Systems, or repairs, or replacement of

existing Storm Sewer Systems. Inspection shall include shop drawing review, daily quantities, daily inspection log, pay heights, and any as-built information the City collects, all in accordance with typical City standards and practices.

- b. *Urgent Repairs.* Storm Sewer System repairs that are not included in the County's CIP may be made as stand-alone projects to address immediate and urgent needs when determined as necessary by the County. Urgent repairs must be approved by both the City and the County prior to incurring any costs.
 - i. Work performed under contract. The County and the City shall share Storm Sewer System repair costs and responsibilities in accordance with sections 7. a. i., 7. a. ii, and 7. a. iii.
 - ii. Work completed by County and City staff. The County shall generally be responsible for traffic control, bituminous pavement removal, excavation, and bituminous patching and the City shall generally be responsible for repair or replacement of castings, rings, structures, and pipes.
8. Cooperative. The County and the City shall cooperate and use their reasonable efforts to ensure prompt implementation of the various provisions of this Agreement. The parties agree to, in good faith, undertake resolution of any disputes in an equitable and timely manner.
9. Independent Contractor. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of agents, partners, joint ventures, or associates between the parties hereto or as constituting City as the employee of the County for any purpose or in any manner whatsoever.
10. Mutual Indemnification. Each party shall be liable for its own acts to the extent provided by law and hereby agrees to indemnify, hold harmless and defend the other, its officers and employees against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney's fees which the other, its officers and employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any act or omission of the party, its agents, servants, or employees, in the execution, performance, or failure to adequately perform its obligations pursuant to this Agreement. It is understood and agreed that the

County's and City's liability is limited by the provisions of the Municipal Tort Claims Act, Minn. Stat. Ch. 466 or other applicable law.

11. Payment. Upon presentation of an itemized claim by one agency to the other, the receiving agency shall reimburse the invoicing agency for its share of the costs incurred under this Agreement within 30 days from the presentation of the claim. If any portion of an itemized claim is questioned by the receiving agency, the remainder of the claim shall be promptly paid, and accompanied by a written explanation of the amounts in question. Payment of any amounts in dispute will be made following good faith negotiation and documentation of actual costs incurred in carrying out the work.
12. Rights/Remedies. All remedies available to either party under the terms of this Agreement or by law are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies. The waiver of any default by either party, or the failure to give notice of any default, shall not constitute a waiver of any subsequent default or be deemed to be a failure to give such notice with respect to any subsequent default unless stated to be such in writing and signed by Authorized Representatives of the County and the City.
13. Duty to Mitigate. Both parties shall use their best efforts to mitigate any damages which might be suffered by reason of any event giving rise to a remedy hereunder.
14. Authorized Representatives. The County's Authorized Representative for the purpose of the administration of this Agreement is Mark Krebsbach, Dakota County Engineer, 14955 Galaxie Avenue, 3rd Floor, Apple Valley, MN 55124-8579, phone (952) 891-7100, or his successor. The City's Authorized Representative for the purpose of the administration of this Agreement is Thomas Montgomery, 1225 Progress Drive, Hastings, MN 55033 (651) 480-2350 or his successor. All notices or communications required or permitted by this Agreement shall be either hand delivered or mailed by certified mail, return receipt requested, to the above addresses. Either party may change its address by written notice to the other party. Mailed notice shall be deemed complete two business days after the date of mailing.
15. Modifications. Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, approved by the parties respective Board or Council, and signed by Authorized Representatives of the County and the City.

16. Severability. The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part(s) which are void, invalid, or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to either part.
17. Final Agreement. This Agreement is the final expression of the agreement of the parties and the complete and exclusive statement of the terms agreed upon and shall supersede all prior negotiations, understandings, or agreements. There are no representations, warranties, or stipulations, either oral or written, not herein contained.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their duly authorized representative.

CITY OF HASTINGS

RECOMMENDED FOR APPROVAL:

Public Works Director

By _____
Mayor

(SEAL)

By _____
City Clerk

Date _____

COUNTY OF DAKOTA

RECOMMENDED FOR APPROVAL:

County Engineer

By: _____
County Administrator

Date: _____

APPROVED AS TO FORM:

Assistant County Attorney Date

COUNTY BOARD RESOLUTION

No. 13-445 Date August 27, 2013