



ACME TOWNSHIP SPECIAL BOARD MEETING
ACME TOWNSHIP HALL
6042 Acme Road, Williamsburg MI 49690
Thursday, September 18, 2014, 5:30 p.m.

CALL TO ORDER WITH PLEDGE OF ALLEGIANCE AT 5:35 P.M.

Members present: J. Aukerman, C. Dye, A. Jenema, G. LaPointe, P. Scott, D. White, J. Zollinger
Members excused: None
Staff present: N. Edwardson, Recording Secretary

A. LIMITED PUBLIC COMMENT:

B. Kelley, 4893 Ridge Crest, expressed his appreciation to the Tribe for the road repairs that were funded by them. Kelley stated that they were good neighbors as well as community members.

A. Rundhaugh, 3733 Bunker Hill Road, expressed her concerns with why so many special board meetings.

B. APPROVAL OF AGENDA:

Motion by Scott, seconded by Aukerman, to approve the agenda as presented. Motion carried by unanimous vote.

C. INQUIRY AS TO CONFLICTS OF INTEREST: None Noted

D. NEW BUSINESS:

1. CANCELLATION OF AGREEMENT ACME TOWNSHIP/LAUTNER ROAD IMPROVEMENTS

Tribe picking up responsibility of improvement. Permit issued by Road Commission to the Tribe directly

Zollinger stated at the August 12, 2014, Board meeting a motion was passed to approve an agreement with the Grand Traverse County Road commission concerning partial improvements to Lautner Road.

A meeting was held between The Tribe and the Road commission and an agreement was reached that The Tribe now has the funds obligated to construct the required road improvements including the roundabout on Lautner Road. The Tribe has applied for a Right-of-Way permit to construct the improvements using Bureau of Indian Affairs funds they have on hand.

Acme Township Board agrees to terminate the agreement of August 19, 2014, with the GTCRC, so funds being held by the Grand Traverse County Road Commission can be released to the VGT.

Scott questioned the August 19th date as it was a Sunday. Zollinger stated that was the date the Road Commission put on the document.

Aukerman asked if the \$600,000.00 was just for Lautner Road from M-72 to Bunker Hill Road.

Zollinger commented that it was from the railroad tracks on Lautner Road to M-72 including the roundabout on Lautner Road.

White asked if the developer had to put up some money. Zollinger stated that the VGT put up trust money on all the internal roads in the property. The Tribe will do the external. VGT is still responsible for the roads no occupancy will be issued until roads are built.

Motion by White, seconded by LaPointe, to authorize the cancellation of agreement dated August 19, 2014, between Acme Township and Grand Traverse County Road Commission. Motion carried by unanimous roll call vote.

A. Rundhaugh, asked what the completion date was. Zollinger said Spring 2015.

Zollinger stated that the agreement with the Trust Fund and the Hoxsie House has been completed. Svec construction completed the job today with topsoil and seeding. Zollinger has submitted photos to the DNR Trust Fund. Zollinger was very pleased with the work performed by Svec Construction.

Adjourn at 5:50 p.m



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CALL TO ORDER WITH PLEDGE OF ALLEGIANCE
ROLL CALL

A. LIMITED PUBLIC COMMENT:

Public Comment periods are provided at the beginning and end of each meeting agenda. Members of the public may address the Board regarding any subject of community interest during these periods. Comment during other portions of the agenda may or may not be entertained at the moderator's discretion.

B. APPROVAL OF AGENDA:

C. INQUIRY AS TO CONFLICTS OF INTEREST:

D. NEW BUSINESS:

1. CANCELLATION OF AGREEMENT ACME TOWNSHIP/LAUTNER ROAD IMPROVEMENTS

Tribe picking up responsibility of improvement. Permit issued by Road Commission to the Tribe directly.

PUBLIC COMMENT & OTHER BUSINESS THAT MAY COME BEFORE THE BOARD:

ADJOURN

*Authorization to Cancel Agreement Dated August 19, 2014 between Acme
Township and Grand Traverse County Road Commission
Date September 18, 2014*

At a meeting of the Acme Township Board of Trustees, held on September 18, 2014, the Acme Township Board of Trustees, on a motion made by, _____ and seconded by _____ passed the following agreement to cancel an agreement with the GTCRC concerning partial improvements to Lautner road.

Whereas, at the August 12, 2014 Acme Township Board meeting a motion was passed to approve an Agreement with The Grand Traverse Country Road commission concerning partial Improvements to Lautner Road and The Township Supervisor, Zollinger and Clerk, Dye were authorized to Sign this Agreement.

Whereas this original agreement showed The Grand Traverse Band of Ottawa and Chippewa Indians (The Tribe) were going to construct this improvement by using The Indian Reservation Road Program. With the timing of this work and uncertainty of when these funds might be available The VGT developer did provide to the Road Commission sufficient funds or surety in the amount of \$600,000.00 in the event that the improvements are not funded under the Tribal MOA Process.

Whereas a meeting was held between The Tribe and The Grand Traverse Road Commission and an agreement was reached that The Tribe now has the funds obligated to construct the required road improvements including the Roundabout on Lautner road. The Tribe has applied for a Right-of- Way permit to construct the improvements using Bureau of Indian Affairs funds they have on hand. Once this conditional Permit has been issued the Road Commission will provide a copy to Acme Township, and a copy will be attached to this document.

Now therefore be it resolved that the Acme Township Board agrees to terminate the agreement of August 19, 2014 with the GTCRC so funds being held by the Grand Traverse County Road Commission can be released to the VGT.

Township Board members present:

Absent:

Upon roll call, the following vote was cast:

Aye:

Nay:

Abstaining:

Jay B. Zollinger
Acme Township Supervisor

Cathy Dye
Acme Township Clerk

9/17/2014



1881 LaFranier Road
Traverse City, Michigan
49696

Phone (231) 922-4848
Fax (231) 929-1836

September 12, 2104

Jay Zollinger, Supervisor
Acme Township
6042 Acme Road
Williamsburg MI 49690

RE: PARTIAL IMPROVEMENT OF LAUTNER ROAD AGREEMENT

Dear Jay:

As you are aware, the Township, the Road Commission, and the Village of Grand Traverse ("VGT") entered into an Agreement Concerning Partial Improvement of Lautner Road (the "Agreement") for the purpose of satisfying the requirement in Permit No. 2009-01P that the Village of Grand Traverse have a right-of-way permit from the Road Commission for the improvements required under the Permit to Lautner Road (the "Improvements"). The Grand Traverse Band of Ottawa and Chippewa Indians (the "Tribe") now has the funds obligated to construct the required improvements and will be applying for a Right-of-Way Permit to construct the improvements.

Following receipt and review of the application for a Right-of-Way Permit by the Tribe, the Road Commission will issue a Conditional Right-of-Way Permit to the Tribe for construction of the Improvements. It is my understanding that the issuance of the Conditional Right-of-Way Permit to the Tribe will satisfy Permit No. 2009-01P's requirement for a Right-of-Way Permit. In light of this, VGT has requested that the funds held by the Road Commission be returned to it. The Road Commission is willing to return such funds provided that the Agreement and the Road Commission's obligations thereunder are terminated.

Once the Road Commission issues the Conditional Right-of-Way Permit to the Tribe, the Road Commission will provide the Township with a copy of the Conditional Right-of-Way Permit. The next step then would be for the Road Commission and Township Boards to approve the termination of the Agreement. Upon approval of the termination of the Agreement, the Road Commission will release the funds to VGT.

Please let me know if you have any questions.

Sincerely,

Jim Cook
Manager

cc	VGT	Ken Ockert
	Karrie Zeits, Legal Counsel	Jerry Heim, Fin Dir
	Jim Johnson, PE, Co Hwy Eng	Steve Smith
	Project File	

AGREEMENT CONCERNING PARTIAL IMPROVEMENT OF

LAUTNER ROAD

This Agreement is dated this 19th day of Aug., 2014, by and between the Grand Traverse County Road Commission, a quasi-municipal corporation, of 1881 LaFranier Road, Traverse City, Michigan, (the "Road Commission"), Acme Township, a Michigan municipal corporation, of 6042 Acme Road, Williamsburg, Michigan (the "Township") and the Village at Grand Traverse, LLC a Michigan limited liability company of _____ ("VGT").

WHEREAS, Lautner Road is a road under the jurisdiction of the Road Commission and located within the Township; and

WHEREAS, the Road Commission and the Township have entered into a previous agreement concerning the improvement of Lautner Road from approximately M-72 to Bunker Hill Rd. (the "Project"); and

WHEREAS, funding for the Project is expected to come through the Indian Reservation Roads Program; and

WHEREAS, a Memorandum of Agreement ("MOA") between the Grand Traverse Band of Ottawa and Chippewa Indians (the "Tribe") and the Road Commission must be entered into by those parties or the Tribe must construct the Project or a portion thereof in order for the Project or portion thereof to be funded through the Indian Reservation Roads Program; and

WHEREAS, the timing for approval and execution of the MOA and release of the funding or the Tribe's construction of the Project or portion thereof is uncertain; and

WHEREAS, part of the improvement to Lautner Rd will include those improvements along the VGT development that are required by the Township's approval of VGT's Site Plan which is Permit No. 2009-01P, as amended ("2009-01P"); and

WHEREAS, according to 2009-01P, VGT must have a right-of-way permit from the Road Commission for the required improvements to Lautner Rd. ("Improvements") before the Township can issue a land use permit for the construction of the Meijer store at the VGT development in order to assure the Township that the Improvements are authorized to be constructed; and

WHEREAS, because the Project will not result in a Road Commission permit issued to VGT for the Improvements and because of the uncertainty of timing for the Road Commission's receipt of the Indian Reservation Roads Program money from the Tribe under the MOA or the Road Commission's issuance of a right-of-way permit to the Tribe to construct the

Improvements, the parties must enter into this Agreement to assure that funds are available for the Improvements; and

WHEREAS, the Road Commission estimates that \$600,000.00 will be required for the Improvements; and

WHEREAS, VGT will provide to the Road Commission sufficient funds or other surety in the amount of \$600,000.00 to be utilized by the Road Commission to construct the Improvements in conformity with the requirements of 2009-01P in the event that the Improvements are not funded under the MOA or constructed by the Tribe; and

WHEREAS, this Agreement is authorized by MCL 124.1 *et seq.*, and MCL 41.1 *et seq.*;

NOW THEREFORE, the parties in consideration of \$1.00, receipt of which is hereby acknowledged, and the mutual benefits and promises set forth herein, the parties agree as follows:

1. VGT will either deposit sufficient funds with the Road Commission or acquire a bond or other surety acceptable to the Road Commission for the benefit of the Road Commission in the amount of \$600,000.00 to be utilized by the Road Commission for the Improvements within 7 days of signing this Agreement.

If the Project is funded through the MOA or the Tribe constructs the Improvements, the Road Commission shall return the funds or the bond or other form of surety provided by VGT within 60 days from receipt of funding for the Improvements through the MOA; or the date that the Tribe executes a contract for construction of the Improvements and a right-of-way permit for such construction is issued by the Road Commission, whichever occurs later. If for any reason the Project is not funded through the MOA or constructed by the Tribe, the Road Commission will perform the Improvements in conformity with the requirements of 2009-01P utilizing the funds deposited by VGT or with the funds it acquires from exercising its rights under the bond or other form of surety if a bond or other form of surety has been provided and accepted in lieu of the funds.

- a. All engineering with respect to the Improvements shall be performed by the Road Commission or under the supervision or subject to the approval of the Road Commission.
- b. In the event that the Road Commission performs the Improvements, all construction, including the awarding of contracts for construction, in connection with the Project shall performed by the Road Commission.

2. Conditions Precedent to Road Commission's Obligation. The obligation of the Road Commission to perform the Improvements or any portion thereof is subject to the following conditions precedent, which must be satisfied:

- a. If a bond or other surety has been provided and accepted in lieu of funds, funds are released to the Road Commission under the bond or other surety, or VGT presents and contributes the \$600,000.00 to the Road Commission.
- b. No action, suit, proceeding or investigation shall be pending before any court, public board or body to which the Road Commission or the Township is a party, or threatened against the Road Commission or the Township contesting the validity or binding effect of this Agreement, which could result in an adverse decision which would have one or more of the following effects:
 - i. A material adverse effect upon the ability of the Road Commission to receive the funds under the bond, other surety, or the funds.
 - ii. A material adverse effect on the Road Commission's ability to comply with the obligations and terms of this Agreement.
- c. There has been no change in statutes or other law which would have one or more of the effects described in b. above.
- d. All necessary easements have been secured for the Improvements.
- e. Proper approvals for the Improvements have been secured.
- g. The Road Commission has received the consent of any affected utility for relocation, burial or any other activity necessary to construct the Improvement.
- h. The total Improvements cost does not exceed the amount of funds available under the bond or other surety or provided by VGT.
- i. The Agreement remains in full force and effect.

In the event that any of the above conditions are not satisfied, the Road Commission will not be obligated to perform the Improvements or any portion thereof and this Agreement shall be terminated.

3. Right-of-Way Permit. This Agreement is in lieu of a Right-of-Way Permit for the Improvements as required by 2009-01P and is acceptable to the Township to meet the requirement that a Right-of-Way Permit be issued by the Road Commission for the Improvements because it provides the necessary assurance that the Improvements are authorized and will be constructed.

4. Not a Joint Venture. The parties do not intend this Agreement to be a joint venture.

5. Third Party Beneficiaries. This Agreement confers no rights or remedies on any third party, other than the parties to this Agreement and their respective successors and permitted assigns.

6. Termination. This Agreement shall terminate upon completion of the Improvements or as set forth in paragraph 2. Upon termination, neither party shall have any further rights or obligations under this Agreement.

7. Execution in Counterparts. This Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

8. Entire Agreement. This Agreement, together with all items incorporated herein by reference, constitutes the entire Agreement of the parties and there are no valid promises, conditions or understandings which are not contained herein.

GRAND TRAVERSE COUNTY ROAD
COMMISSION

Dated:

Marc McKellar
Marc McKellar, Chairperson

For Jenny Heim Deputy clerk
Debra J.M. Hunt, Clerk

Approved as to Substance:

Jim Cook
Jim Cook, Road Commission Manager

Approved as to Form:

Karrie A. Zeits
Karrie A. Zeits, Road Commission Attorney

ACME TOWNSHIP

Dated:

Jay B. Zollinger
Jay B. Zollinger, Supervisor

Cathy Dye
Cathy Dye, Clerk

VGT

Dated: _____

Steven A. Smith
By: Steven A. Smith
Its: Member