

RESOLUTION NO. 1181

RESOLUTION APPROVING A 28E AGREEMENT WITH THE WEST BRANCH COMMUNITY SCHOOL DISTRICT TO MAKE ROAD AND SIDEWALK IMPROVEMENTS IN AND ADJACENT TO NORTH MAPLE STREET AND THE MIDDLE SCHOOL PARKING LOT.

WHEREAS, the City of West Branch is concerned about the safety of children walking to and from school; and

WHEREAS, the City finds it in the best interest of the residents of West Branch to add sidewalks around the Herbert Hoover Elementary and Middle School Complex; and

WHEREAS, the City Council has discussed at length the sidewalks that would provide the most benefit to children walking to school; and

WHEREAS, this project would take place on both City and School District Property; and

WHEREAS, the City Staff, in order to further the goals of the City Council proposed a 28E Agreement to the West Branch Community School District Board of Education which included a provision for cost sharing; and

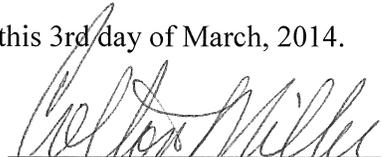
WHEREAS, the School Board agreed that road and sidewalk improvements in and adjacent to North Maple Street and the Middle School Parking Lot would improve the safety of children and parents traveling in the area; and

WHEREAS, the School Board approved the 28E Agreement at their February 2014 Board Meeting; and

WHEREAS, it is now necessary to approve said agreement.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of West Branch, Iowa, that the aforementioned 28E Agreement is hereby approved. Further, the Mayor is directed to execute the agreement on behalf of the City.

Passed and approved this 3rd day of March, 2014.


Colton Miller, Mayor Pro Tem

ATTEST:


Matt Muckler, City Administrator/Clerk

28E AGREEMENT

THIS AGREEMENT entered into by and between the City of West Branch, Iowa, 110 N. Poplar Street, West Branch, Iowa 52358 (hereafter referred to as the “City”); and the West Branch Community School District, 148 N. Oliphant Street, West Branch, Iowa 52358 (hereafter referred to as “School”).

WHEREAS, the City has agreed to undertake certain sidewalk improvements and road improvements, some of which will be constructed on property owned by the School, that property being generally referred to as the north Middle School parking lot near N. Maple Street (collectively the “Property”)

WHEREAS, the City will construct street and sidewalk improvements in and adjacent to N. Maple Street and the Middle School parking lot (the “Project”); and

WHEREAS, the City has agreed to be the lead agency to construct all of the Projects in strict compliance with Chapter 26 of the Code of Iowa; and

WHEREAS, the School has agreed to reimburse the City the cost of \$18,000.00 for the sidewalks to be constructed on the School’s property; and

WHEREAS, it is now necessary for the City and School to enter into a 28E Agreement to outline the obligations and responsibilities of each party as it pertains to the construction of the Project.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **PURPOSE.** The purpose of this 28E Agreement is to set forth the duties and obligations of the City and School in connection with the construction of the Project.

2. **CONSIDERATION.** It is hereby expressly acknowledged by both the City and School that the construction of and payment for the Projects in accordance with the terms and conditions set forth in this Agreement constitutes mutual and sufficient consideration to enter into this Agreement.

3. **SEPARATE ENTITY.** Further, it is hereby noted that no separate legal entity shall be created by this Agreement and the West Branch City Council and Board of Directors of the West Branch Community School District.

4. DUTIES AND RESPONSIBILITIES OF THE PARTIES.

- A. City shall construct the projects using the public bidding procedures outlined in Chapter 26 of the Code of Iowa. City shall pay all pay applications and/or change orders during the construction of the Project.
- B. After completion of the Projects and acceptance of the Projects by the City, the School shall pay to the City, the sum of \$18,000.00, which is the cost of the sidewalk portion of the Project constructed on property owned by School. Said payment shall be within thirty (30) days of the submission of an invoice to the School.
- C. As between the parties, it is the sole responsibility of the City to design and construct the Projects in accordance with the plans and specifications accepted and approved by the West Branch City Council and the School, to the extent a portion of the Project is constructed on Property.
- D. Temporary Construction Easement. As part of this Agreement, the School grants to the City, a temporary construction easement to construct the Project on the School Property. Said temporary construction easement will contain the following terms:
 - 1. The City shall indemnify and hold the School harmless from any and all damages and claims made against the City which is caused by the negligent act of the City or its contractor(s) while constructing the Project unless said damages or claims are caused by the negligence of the School, its employees or agents.
 - 2. That the City will place in its specifications for the Project the requirement that its Contractor(s) name the School as an additional insured for its construction on School property.
 - 3. That City or its Contractor(s) shall repair the areas on the Property used for construction to as near as possible to the position it was prior to the construction of its Project.
 - 4. That the City shall give the School twenty-four hours notice of its intention to enter School property to construct the Project.

5. School reserves the right to limit the times of construction on its property to ensure that School activities are not disturbed.
6. That this temporary construction easement will automatically end upon the completion and acceptance of the Projects as required by Chapters 26 and 573 of the Code of Iowa.

5. **MAINTENANCE OBLIGATIONS.** Each party expressly agree that each party will maintain the property owned by each party.

6. **FILING.** The City Clerk of West Branch shall file this Agreement with the Iowa Secretary of State's office as required by Section 28E.8 of the Code of Iowa.

Executed and approved this 10th day of March, 2014.

CITY:



Colton Miller, Mayor Pro Tem

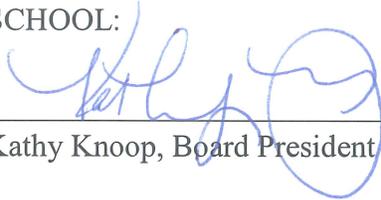
ATTEST:



Matt Muckler, City Administrator/Clerk

Executed and approved this 10~~th~~ day of February, 2014.

SCHOOL:



Kathy Knoop, Board President

ATTEST:



Angela Klinkhammer, Board Secretary