

Michele McPherson

From: Damien Toven <dtovendfvlaw@yahoo.com>
Sent: Wednesday, August 25, 2021 10:48 AM
To: Michele McPherson; Paul Dove
Subject: Re: Kruse/Sandberg/City Agreement

Good morning Michele

We have reviewed the access agreement you provided and the following are our comments:

1. We do not see any language regarding an ability to terminate the agreement because it is not in a recordable format. All default provisions are contained in section 6.1 and that is not one of them. Additionally, provision 6.2 affords them a notice and cure clause where that could be remedied. It may be possible to prepare an affidavit of authenticity in recordable format and attach the agreement and record that, if you feel it necessary.

The agreement does terminate next June 30th, so we are only 10 months away.

2. Your interpretation of provision 4.1(b) is accurate. The city is responsible for all costs associated that portion of the taxiway that is adjacent to their property. However, it would appear this is limited to that part of the taxiway that is on airport property, not their property.

We are not aware of what "per past agreements" means because we don't have those, or an understanding of what those agreements encompassed, but it would likely be a hard argument for them to make that the city is required to engage in work on the taxiway outside of what the city has already determined it would do. Basically, they can't say they want "this done" and so the city "must do it".

3. Provision 5.1 regulates subordination of this agreement to federal law, state law and the airport rules and regulations. If they were to make some sort of demand regarding the taxiway, we can review what other regulations/policies exist that might address the issue, and that would control.

If there are any questions I missed, or if you have any follow up question, please do not hesitate to ask.

Thank you again,

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Michele McPherson

To: Damien Toven
Cc: Bob Gerold (bgerold@princetonmn.org)
Subject: Access Agreement - Kruse-Sandberg
Attachments: 2020 Kruse-Sandberg Access Agreement.pdf

Good afternoon, Damien

I have multiple questions regarding the attached agreement:

1. Did you/your firm see or have a hand in the drafting of the agreement?
2. The original 2000 agreement was recorded in the land records system. It is my opinion that this should also, but there are no notary blocks nor a drafted by to make this recordable.
3. Please review specifically provision 4.1.b which discusses construction cost and responsibility for maintenance of the single use taxiway on airport property and adjacent to the Kruse-Sandberg through the fence operation. My reading of the provision obligates the City (owner) to maintain the taxiway which, while not detailed, would/may include sealcoating, crack sealing and possibly total reconstruction. This obligation is contrary to the position of the Airport Advisory Board, and State/FAA funding policy. Essentially, the entire maintenance cost would be the City's as given the single-use status of the taxiway, it is not eligible for State/FAA funding.
4. Is there a way to break this agreement and renegotiate it to eliminate the above provision, or include a cost-share provision when it comes to maintenance.

The review of this document was prompted by Mr. Kruse attending the joint meeting of the Council & Airport Advisory Board and requesting that the City perform maintenance on the taxiway.

Thank you for your attention to this matter.

Michele McPherson (M2)

City Administrator



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"It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, who comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who knows great enthusiasms, the great devotions, who spends himself in a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who neither know victory nor defeat."
Citizenship in a Republic – Theodore Roosevelt, Paris 1910