



# MAYOR & COUNCIL COMMUNICATION

**DATE:** December 2, 2014  
**REGULAR**  
**ITEM #** 17

**AGENDA ITEM:** Lake Elmo Avenue (CSAH 17) Project Cooperative Agreement with Washington County for Right of Way Acquisition

**SUBMITTED BY:** Nick M. Johnson, City Planner

**THROUGH:** Dean Zuleger, City Administrator

**REVIEWED BY:** Kyle Klatt, Community Development Director  
Jack Griffin, City Engineer  
David Snyder, City Attorney

**SUGGESTED ORDER OF BUSINESS:**

- Introduction of Item .....Community Development Director
- Report/Presentation.....Community Development Director
- Questions from Council to Staff..... Mayor Facilitates
- Call for Motion ..... Mayor & City Council
- Discussion..... Mayor & City Council
- Action on Motion..... Mayor Facilitates

**POLICY RECCOMENDER:** Staff is recommending that the City enter into a cooperative agreement with Washington County to contract right-of-way and temporary easement acquisition services related to the Lake Elmo Avenue Street and Utility Project.

**FISCAL IMPACT:** Not to exceed \$597,950. The City would be required to pay the County for all services rendered related to the acquisition of temporary easements or permanent right of way. The costs for easement and right-of-way acquisition should be considered part of the total project costs and funded in accordance with a council approved project funding plan, yet to be fully determined. The project is planned for in the 2015 and 2016 CIP.

**SUMMARY AND ACTION REQUESTED:** The City Council is being asked to consider entering a cooperative agreement with Washington County to contract services for the acquisition of permanent right-of-way and temporary construction easements for the Lake Elmo Avenue Downtown Street and Utility Project. Contracting these services through Washington County would be advantageous for the City for a number of reasons. Foremost, following the County’s right-of-way acquisition process would help to ensure that the project will proceed as

planned in 2015 and 2016. The acquisition of easements and right-of-way is extremely time sensitive. Failure to acquire the necessary easements could result in the bidding of the project in a less favorable bidding environment, or the delay of the project to the following year.

*Staff is recommending that the City Council approve the Cooperative Agreement with Washington County through the following motion:*

***“Move to adopt Resolution No. 2014-96, approving the Cooperative Agreement with Washington County to facilitate right of way acquisition associated with the Lake Elmo Avenue Downtown Street and Utility Project.”***

### **BACKGROUND INFORMATION:**

The City and County have been working collaboratively over the past year on the Lake Elmo Avenue Downtown Street and Utility Project. The project includes the installation of sanitary sewer, replacement of watermain, stormwater improvements, and street reconstruction for Lake Elmo Ave. from 30<sup>th</sup> Street to Trunk Highway (TH) 5, 30<sup>th</sup> Street North, Upper 33<sup>rd</sup> Street North, 36<sup>th</sup> Street North and Laverne Avenue North. The ability to work on the downtown street and utility project resulted from Washington County moving the project up to 2015 in their Capital Improvement Plan (CIP) at the request of the City. In addition to the development of preliminary plans for the project, the City and County have engaged in significant efforts in community engagement, finance and planning. The project is planned to proceed in two phases over 2015 and 2016 (See Phasing Map for Downtown Street and Utility Improvements – Attachment #5). In order for the project to proceed on the planned schedule, the City and County must begin acquisition of permanent right of way, permanent easements and temporary easements.

To acquire the necessary right of way and easements for the project, the City has been presented two options: 1) The City can acquire all right of way associated with City streets without the assistance of the County, or 2) The County has offered the City the opportunity to utilize the County’s right of way acquisition services for the total project at cost. If the City were to perform the acquisition services for the City streets independently of the County, the City would likely need to contract these services to an outside right-of-way agent and have staff manage this contract. Conversely, if the County were to perform these services, they have the staff in place to complete the acquisition for the entire project, not just Lake Elmo Avenue (CSAH 17 – County facility). Staff has evaluated both options and, after careful consideration, has determined that contracting the service to Washington County is the superior and more prudent option for the following reasons:

- The County right-of-way acquisition process is a tried and true method that will leave no doubt to the acquisition of the necessary right-of-way and easements to proceed with the project. For more detail on the County process, see Attachments #3 and #4. In the judgment of staff, there is a tremendous amount of value in ensuring that the project proceeds in 2015, as the City and County have expended significant resources in preparing for the project to commence in 2015. In other words, ensuring that the

necessary right-of-way is acquired for the process to commence is critical in mitigating potential risk to the project.

- Following the County's acquisition process provides a concrete timeframe in which the final construction plans can be prepared and the project can go out for public bid. One of the critical goals for both the County and the City is to ensure that the public construction project is bid within a favorable bidding timeframe. If the project gets delayed due to right-of-way and easement acquisition, the project could be bid during a less favorable bidding environment, leading to an escalation of costs. Once again, following the County's acquisition process minimizes the risk associated with project delays that can result in escalating costs.
- Completing the necessary acquisition work under the County contract will ensure that all property owners are treated in a fair and equitable manner within the same process. The County will contract all acquisition work through one appraiser and agent, allowing for fair treatment for all property owners, as well as one point of contact for the entirety of the project. Staff believes that there is value in having all property owner's work within the same process so no property owner gains favor or additional compensation over another through the acquisition process.
- Contracting these services to the County provides value to the City in minimizing the amount of resources necessary for management of the acquisition process. Given the magnitude of the project (number of property owners, amount of right-of-way/easements) and the amount of planning, design, construction and public engagement tasks associated with it, staff is concerned with not having sufficient time and resources to adequately manage the acquisition process.

In terms of the costs associated with the right-of-way acquisition, it is important to note that the City will only be responsible for the actual costs incurred within the acquisition process. Within the Cooperative Agreement (Attachment #2), this critical point is outlined in subsection C.4. In other words, if the design of the project as it stands today were to change, and some of the easement or right-of-way acquisition were unnecessary, these services would not be rendered. In other words, the estimate cost figure of \$597,950 is a not-to-exceed worst case scenario figure. In addition, please note that the agreement contains \$121,500 in contingency second-appraisal costs. Under state law, any government must offer a second appraisal if the landowner requests it. However, the request for second appraisal is not common within such public projects. Given the required contingencies in the agreement, staff is confident that the overall cost of right-of-way and easement acquisition will go down as the process unfolds. The County has provided a conservative and safe estimate in order to ensure that the proposed agreement covers all contingencies and scenarios through the acquisition process.

**STRENGTHS, WEAKNESSES, OPPORTUNITIES, THREATS:**

**Strengths:** The County provides greater certainty to maintain a timely project schedule and control of design and construction costs. The County also provides a process that will result in a fair and equitable treatment for all property owners. Finally, utilizing the

County's services will allow City staff to focus resources on design, planning, construction, and community engagement efforts.

**Weaknesses:** If staff had significant time and resources to pursue easement acquisitions in house, acquisition costs may be able to be reduced. However, the ability to reduce acquisition costs likely results in non-equitable treatment between property owners.

**Opportunities:** The County process offers cost-effective and proven methods and the resources to assist the City with maintaining the project schedule. Keeping the project on schedule will result in bidding the project in a more favorable bidding environment.

**Threats:** All acquisition processes risk the threat of dispute. The County process helps ensure statutory process is followed to mitigate the risk of dispute.

**RECOMMENDATION:**

*Based on the aforementioned, Staff is recommending that the City Council approve the cooperative agreement with Washington County through the following motion:*

***“Move to adopt Resolution No. 2014-96, approving the Cooperative Agreement with Washington County to facilitate right of way acquisition associated with the Lake Elmo Avenue Downtown Street and Utility Project.”***

**ATTACHMENTS:**

1. Resolution No. 2014-96
2. Cooperative Agreement for Right of Way Cost of CSAH 17
3. Cooperative Agreement Memorandum
4. County Right of Way Acquisition Schedule
5. Phasing Map for Downtown Street and Utility Improvements