

**COOPERATIVE AGREEMENT BETWEEN THE CITY OF  
LAKE ELMO AND WASHINGTON COUNTY FOR RIGHT OF WAY  
COST OF COUNTY STATE AID HIGHWAY (CSAH) 17**

|                   |                        |
|-------------------|------------------------|
| WASHINGTON COUNTY |                        |
| CONTRACT NO.      | 9155                   |
| DEPT.             | PUBLIC WORKS           |
| DIVISION          | TRANSPORTATION         |
| TERM              | SIGNATURE - COMPLETION |

**THIS AGREEMENT**, by and between the City of Lake Elmo, a municipal corporation, herein after referred to as the "City", and Washington County, a political subdivision of the State of Minnesota, hereinafter referred to as the "County", shall consist of this agreement and Exhibit A (Project Location Map).

**WITNESSETH:**

WHEREAS, the County intends to reconstruct County State Aid Highway (CSAH) 17 (Lake Elmo Avenue) from Trunk Highway (TH) 5 to 30<sup>th</sup> Street North in the City of Lake Elmo; and

WHEREAS, the County intends to reconstruct, as a part of this project, a portion of the City streets: 30<sup>th</sup> Street North, Upper 33<sup>rd</sup> Street North, 36<sup>th</sup> Street North, and Laverne Avenue; and

WHEREAS, the preliminary right of way cost estimate has been prepared by the County and the City will participate in the right of way costs in accordance with the County Cost Participation Policy as summarized in Section C of this agreement; and

WHEREAS, the City desires to use local funds for these improvements; and

WHEREAS, a cooperative effort between the City and County is the appropriate method to facilitate the right of way acquisition; and

WHEREAS, this Agreement is made pursuant to statutory authority contained in Minnesota Statute 162.17 sub.1 and Minnesota Statute 471.59.

**NOW THEREFORE, IT IS HEREBY MUTUALLY AGREED AS FOLLOWS:**

**A. PURPOSE**

The purpose of this agreement is set forth in the above whereas clauses which are all incorporated by reference as if fully set forth herein.

**B. RIGHT OF WAY AND EASEMENTS**

1. The County shall acquire all permanent right-of-way, permanent easements, and temporary slope easements. All permanent rights-of-way, permanent easements, and temporary easements will be acquired in the name of the County.
2. Any rights-of-way, permanent easements, and temporary slope easements that cannot be obtained through negotiation will be acquired by the County through eminent domain proceedings.
3. Upon completion of the project, title to permanent right-of-way for and adjacent to City streets and permanent easements for storm water storage and water quality treatment within the City will be conveyed to the City.

**C. COST PARTICIPATION ITEMS AND ESTIMATED COSTS**

1. The estimated cost participation breakdown is in accordance with the REVISED DRAFT "Cost Participation Policy for Projects Constructed in Washington County Using State Aid Funds or Local Tax Levy Dollars" dated September 30, 2014.
2. The City shall pay to the County 55 percent of the cost of all permanent right-of-way, permanent

utility and/or drainage easements, temporary slope easements, title work costs, appraisal costs, relocation specialist costs, relocation costs, condemnation commissioner costs, and all related acquisition costs along CSAH 17 (Lake Elmo Avenue), from 30<sup>th</sup> Street North to MN Highway 5. The City cost is ESTIMATED in the table below.

3. The City shall pay to the County 100 percent of the cost of all permanent right-of-way, permanent utility and/or drainage easements, temporary slope easements, title work costs, appraisal costs, relocation specialist costs, relocation costs, condemnation commissioner costs, and all related acquisition costs on 30<sup>th</sup> Street North, Upper 33<sup>rd</sup> Street North, 36<sup>th</sup> Street North, and Laverne Avenue. The City cost is ESTIMATED in the table below.

| <b>Table 1<br/>City of Lake Elmo Cost Summary</b>   |                    |
|---|--------------------|
| ITEM  | CITY COST ESTIMATE |
| <b>CITY STREET (30<sup>TH</sup> ST N, UPPER 33<sup>RD</sup> ST N, 36<sup>TH</sup> ST N, LAVERNE AVE) ACQUISITION NEEDS:</b> |                    |
| TITLE WORK COSTS (100%)   | \$6,450            |
| APPRAISAL COSTS (100%)  | \$43,000           |
| LANDOWNER SECOND APPRAISAL COSTS (100%)   | \$64,500           |
| PERMANENT RIGHT OF WAY ACQUISITION (100%)   | \$100,000          |
| TEMPORARY EASEMENT ACQUISITION (100%)   | \$75,000           |
| TREE AND LANDSCAPING COST TO CURE (100%)  | \$30,000           |
| <b>LAKE ELMO AVENUE (CSAH 17) ACQUISITION NEEDS:</b>  |                    |
| TITLE WORK COSTS (55%)  | \$6,000            |
| APPRAISAL COSTS (55%)   | \$40,000           |
| LANDOWNER SECOND APPRAISAL COSTS (55%)  | \$57,000           |
| PERMANENT RIGHT OF WAY ACQUISITION (55%)  | \$70,000           |
| TEMPORARY EASEMENT ACQUISITION (55%)  | \$80,000           |
| TREE AND LANDSCAPING COST TO CURE (55%)   | \$26,000           |
| <b>TOTAL COSTS</b>  | <b>\$597,950</b>   |

4. Actual right of way costs shall be determined at the conclusion of the acquisition process. The City shall be responsible to pay for the actual costs of the aforementioned acquisition costs.

**D. PAYMENT**

Right of way costs shall be due a payable by the City to the County immediately and will be invoiced to the City by the County as incurred during the project. The City shall pay 100 percent of the invoiced amount within 35 days of its receipt.

**E. CIVIL RIGHTS AND NON-DISCRIMINATION**

The provisions of Minn. Stat. 181.59 and of any applicable ordinance relating to civil rights and discrimination shall be considered part of this Agreement as if fully set further herein, and shall be part of any Agreement entered into by the parties with any contractor subcontractor, or material suppliers.

**F. INDEMNIFICATION**

1. The City agrees that it will defend, indemnify and hold harmless the County against any and all liability, loss, damages, costs and expenses which the County may hereafter sustain, incur or be required to pay by reason of any negligent act by the City, its agents, officers or employees during the performance of this agreement.
2. The County agrees that it will defend, indemnify and hold harmless the City against any and all liability, loss, damages, costs and expenses which the City may hereafter sustain, incur or be required to pay by reason of any negligent act by the County, its agents, officers or employees during the performance of this agreement.
3. To the fullest extent permitted by law, actions by the parties to this Agreement are intended to be and shall be construed as a “cooperative activity” and it is the intent of the parties that they shall be deemed a “single governmental unit” for the purposes of liability, as set forth in Minnesota Statutes, Section 471.59, subd. 1a(b). The parties to this Agreement are not liable for the acts or omissions of another party to this Agreement except to the extent they have agreed in writing to be responsible for the acts or omissions of the other parties as provided for in Section 471.59, subd. 1a.
4. Each party’s liability shall be governed by the provisions of Minnesota Statutes, Chapter 466 and other applicable law. The parties agree that liability under this Agreement is controlled by Minnesota Statute 471.59, subdivision 1a and that the total liability for the parties shall not exceed the limits on governmental liability for a single unit of government as specified in 466.04, subdivision 1(a).

**G. DATA PRIVACY**

All data collected, created, received, maintained, or disseminated, or used for any purposes in the course of this Agreement is governed by the Minnesota Government Data Practices Act, Minnesota Statutes 1984, Section 13.01, et seq. or any other applicable state statutes and state rules adopted to implement the Act, as well as state statutes and federal regulations on data privacy.

**H. CONDITIONS**

The City shall not assess or otherwise recover any portion of its cost for this project through levy on County-owned property.

IN TESTIMONY WHEREOF the parties have duly executed this agreement by their duly authorized officers.

**WASHINGTON COUNTY**

**CITY OF LAKE ELMO**

\_\_\_\_\_  
Chair Date  
Board of Commissioners

\_\_\_\_\_  
Mayor Date

\_\_\_\_\_  
Molly O’Rourke Date  
County Administrator

\_\_\_\_\_  
City Administrator Date

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Assistant County Attorney Date

\_\_\_\_\_  
City Attorney Date

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## **MEMORANDUM**

**Date:** November 25, 2014  
**To:** City of Lake Elmo  
**From:** Washington County Public Works  
**Re:** **Cooperative Agreement between the City of Lake Elmo and Washington County for Right of Way Cost of County State Aid Highway (CSAH) 17**

Below is a brief description of how the estimated costs were calculated for the anticipated right of way acquisition associated with the Lake Elmo Avenue (CSAH 17) Corridor Management and Safety Improvement Project. The items described below are associated with the standard right of way acquisition process the County follows.

### TITLE WORK COSTS

- Necessary to verify ownership and any encumbrances on the property.
- Cost is \$150/parcel

### APPRAISAL COSTS

- Appraiser will value the acquisition area needed for each parcel
- The appraised value will be used as the offer to the property owners for the necessary acquisition.
- Appraisal costs vary depending on the complexity of the parcel; but average \$1000/parcel

### LANDOWNER SECOND APPRAISAL COSTS

- After the initial offer is made, property owners have a right (by Minnesota State Law) to hire a different appraiser to value the acquisition area. This is usually done only if a property owner is not satisfied with the initial offer.
- By Minnesota State Law, property owners are entitled reasonable reimbursement for a second appraisal up to \$1500 for single family residential, two-family residential, and agricultural property and \$5000 for commercial and other types of property.
- Costs for this in the cooperative agreement were assuming a majority of property owners would get a second appraisal; which is unlikely.

### PERMANENT RIGHT OF WAY ACQUISITION COSTS

- The appraiser will determine the value of the property based on recent sales of similar property

- This project will necessitate several small permanent acquisitions; with the majority of permanent acquisitions on 30<sup>th</sup> Street.

#### TEMPORARY EASEMENT ACQUISITION COSTS

- The majority of property along Lake Elmo Avenue, 30<sup>th</sup> Street, Upper 33<sup>rd</sup> Street, 36<sup>th</sup> Street North, and Laverne Avenue will require temporary easements
- Temporary Easement costs are essentially “rental costs” for the necessary area.
- Temporary Easement costs usually range between 8-10% of the land value/year
- Temporary Easements are normally purchased for at least two construction seasons (For example: April 1, 2015 – September 30, 2016) even if the project is designed to be completed in one season. This allows for any schedule delays, turf establishment in the easement area, and clean-up work.

#### TREE AND LANDSCAPING COST TO CURE

- There will be an estimated 46 trees removed on private property as a part of the project.
- Full grown tree value averages \$1000/tree
- The appraiser will include any tree compensation in the appraised value of the overall acquisition amount.
- Estimated costs in the table on the cooperative agreement allow for these 46 trees; and in addition, any trees that may have been missed or additional shrubs and/or landscaping items that would also be reimbursed to the property owners in the appraisals.

#### CONDEMNATION COSTS

- These costs are not listed on the table in the cooperative agreement; as there is no way to estimate them
- For any parcel that does not settle; the County will begin eminent domain proceedings
- Costs associated with these proceedings include (but are not limited to): condemnation commissioner, attorney, updated appraisal, and testimony fees.
- If this step is needed, the city will be responsible for 100% of these costs on acquisitions along city streets and 55% of these costs on acquisitions along Lake Elmo Avenue (CSAH 17)

**R/W Schedule: Laverne Ave, Upper 33rd, 36th**

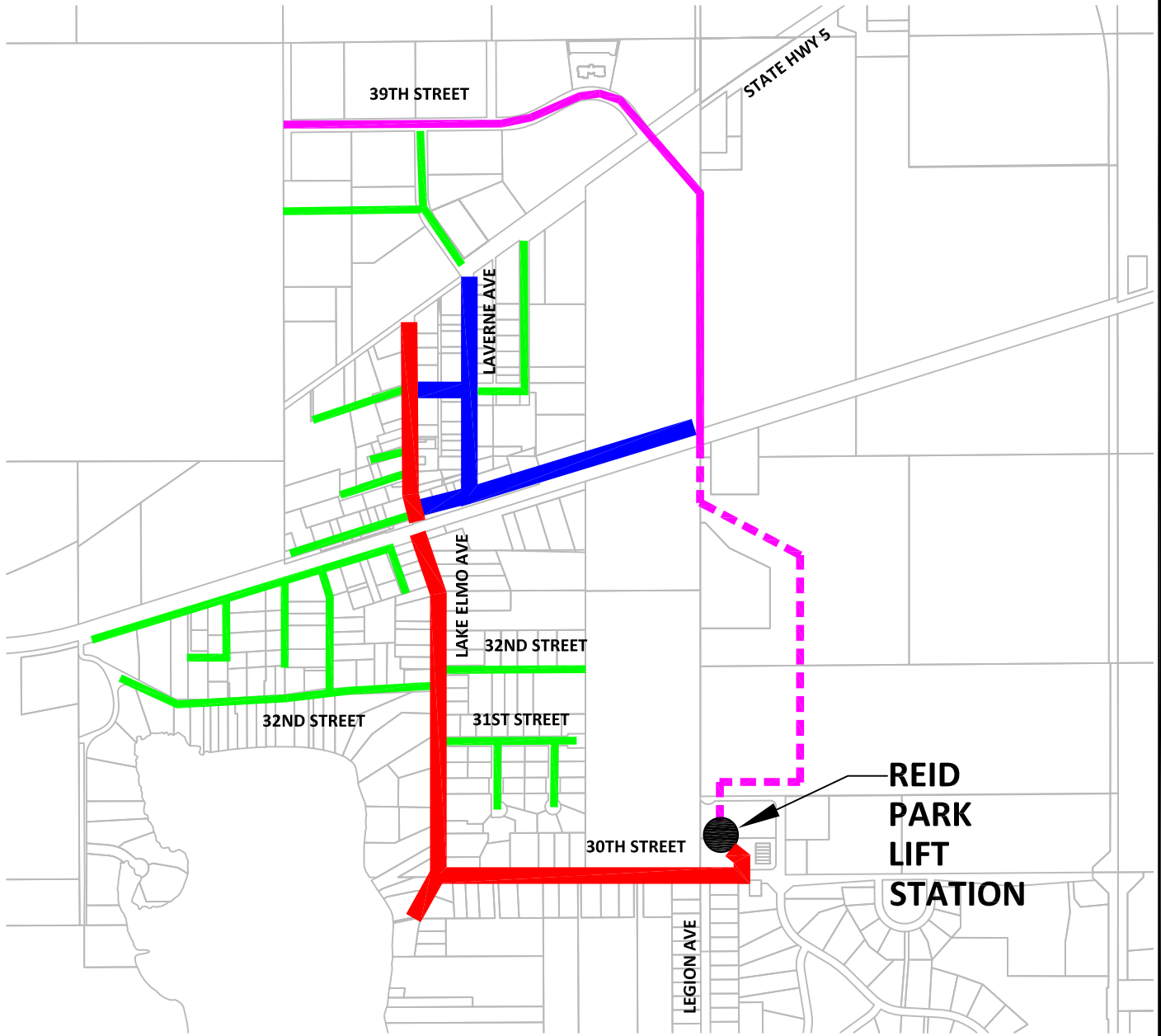
*(As of November 4, 2014)*

| <b>Action</b>  | <b>Date</b>                   |
|--|-------------------------------|
| Final Construction limits determined and to the County (for Laverne Ave, Upper 33rd and 36th)  | November 14, 2014             |
| <i>City Approval of Cooperative Agreement (ROW and Design)</i>   | <i>November, 2014</i>         |
| <i>To County Board: RBA for Hiring Appraiser; RBA to Acquire ROW; Cooperative Agreement (ROW and Design) with City of Lake Elmo; Project Update</i>          | <i>December 9 or 16, 2014</i> |
| John Baer (County Survey) working on parcel sketches and legal descriptions for Laverne Ave, Upper 33rd, and 36th  | November and December, 2014   |
| Initial Contact Letters sent to residents  | December, 2014                |
| Parcel Sketches, Legal Descriptions, and Property Information to Appraiser   | January 2, 2015               |
| Appraisals Due   | February 27, 2015             |
| Make offers to all property owners (as appraisals come in - no later than the end of March)  | no later than March 27, 2015  |
| <b>Negotiate and Buy R/W</b>   | <b>March - May, 2015</b>      |
| Begin Eminent Domain Process with unsettled parcels (serve all unsettled parcel property owners through WashCo Attorney's Office) (60 days after last offer) | May 27 - June 10, 2015        |
| Continue Negotiations with unsettled parcels   | June - August                 |
| <b>Title and Possession for all R/W on Laverne Ave, Upper 33rd, and 36th (90 days after property owners were served)</b>                                     | <b>September 8, 2015</b>      |

**R/W Schedule: CSAH 17 and 30th Street**

*(As of November 4, 2014)*

| <b>Action</b>  | <b>Date</b>                   |
|--|-------------------------------|
| <i>City Approval of Cooperative Agreement (ROW and Design)</i>   | <i>November, 2014</i>         |
| <i>To County Board: RBA for Hiring Appraiser; RBA to Acquire ROW; Cooperative Agreement (ROW and Design) with City of Lake Elmo; Project Update</i>          | <i>December 9 or 16, 2014</i> |
| Final Construction limits determined and to the County (for CSAH 17 and 30th Street)   | December 31, 2014             |
| John Baer (County Survey) working on parcel sketches and legal descriptions for CSAH 17 and 30th Street  | January and February, 2015    |
| Initial Contact Letters sent to residents  | February, 2015                |
| Parcel Sketches, Legal Descriptions, and Property Information to Appraiser   | March 2, 2015                 |
| Appraisals Due   | May 1, 2015                   |
| Make offers to all property owners (as appraisals come in)   | no later than June 5, 2015    |
| <b>Negotiate and Buy R/W</b>   | <b>June - August, 2015</b>    |
| Begin Eminent Domain Process with unsettled parcels (serve all unsettled parcel property owners through WashCo Attorney's Office) (60 days after last offer) | August 5 - August 19, 2015    |
| Continue Negotiations with unsettled parcels   | August - October              |
| <b>Title and Possession for all R/W on CSAH 17 and 30th Street (90 days after property owners were served)</b>   | <b>November 18, 2015</b>      |



**LEGEND**

- 2014 CONSTRUCTION: 39TH STREET IMPROVEMENTS (CITY PROJECT)
- - - - 2015 CONSTRUCTION: VILLAGE EAST SEWER IMPROVEMENTS (PRIVATE PROJECT)
- 2015 CONSTRUCTION: VILLAGE STREET, SANITARY SEWER, AND WATERMAIN IMPROVEMENTS (CITY PROJECT)
- 2016 CONSTRUCTION: VILLAGE STREET, SANITARY SEWER, AND WATERMAIN IMPROVEMENTS (COUNTY PROJECT)
- FUTURE: TENTATIVE 2017-2019 CONSTRUCTION: VILLAGE STREET AND UTILITY IMPROVEMENTS (CITY PROJECTS)

