

COOPERATIVE AGREEMENT BETWEEN THE CITY OF LAKE ELMO AND WASHINGTON COUNTY FOR ~~RIGHT OF WAY, PRELIMINARY DESIGN, FINAL DESIGN, CONSTRUCTION INSPECTION/ADMINISTRATION AND CONSTRUCTION COSTS FOR COUNTY STATE AID HIGHWAY (CSAH) 17~~COUNTY STATE AID HIGHWAY (CSAH 17) PHASES I & II

WASHINGTON COUNTY	
CONTRACT NO.	<u>10196</u>
DEPT.	<u>PUBLIC WORKS</u>
DIVISION	<u>TRANSPORTATION</u>
TERM	<u>SIGNATURE - COMPLETION</u>

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, Exhibit A (Project Location Map), Exhibit B (Phase 1 Costs), and Exhibit C (Phase 2 Costs). "Washington County Cost Participation Policy #8001 for Cooperative Highway Improvement Projects" which is incorporated into this agreement by reference.

WITNESSETH:

WHEREAS, the County ~~intends to reconstruct in 2015~~, as Phase 1 of this project, a portion of the City streets; Upper 33rd Street North, 36th Street North, and Laverne Avenue in downtown Lake Elmo as shown on Exhibit A; ~~and~~

WHEREAS, the County intends to reconstruct in 2016, as Phase 2 of this project, CSAH 17 (Lake Elmo Avenue) from ~~Trunk Highway (TH) 5~~ County State Aid Highway 14 (Old Trunk Highway 5) to 30th Street and a portion of 30th Street North, 36th Street west of CSAH 17, 35th Street west of CSAH 17, and 34th Street west of CSAH 17 in the downtown Lake Elmo as shown on Exhibit A; and

WHEREAS, the right of way, preliminary design, final design, construction inspection/administration and construction cost estimates for Phase 1 have been prepared by the County and the City will participate in these costs as summarized in Section F of this cooperative agreement; and

WHEREAS, the right of way, preliminary design, final design, construction inspection/administration and construction cost estimates for Phase 2 has been prepared by the County and the City will participate in these costs as summarized in Section F of this cooperative agreement; and

WHEREAS, the City desires to use local and state aid funds for these improvements, the State Aid Project number for Laverne Ave is SAP 201-106-001, the City Project number ~~for 36th Street~~ is 2014-137, the State Aid Project number for 30th Street is SAP 206-108-002; and

WHEREAS, the County desires to use local and state aid funds for these improvements, the State Aid Project number for CSAH 17 (Lake Elmo Avenue) is SAP 082-617-007, and 082-617-013; and

WHEREAS, a cooperative effort between the City and County is the appropriate method to facilitate the right of way acquisition, preliminary and final design, construction inspection/administration and construction cost; 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

1. 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.

2. The Parties agree that ~~his Agreement No. 10196 contract~~ terminates and supersedes Cooperative Agreement No. ~~9660 between the Parties, dated June 23, 2015 which superseded and terminated Cooperative Agreement No. 9155 between the Parties, dated December 16, 2014.~~

B. PLANS AND SPECIFICATION PREPARATION

The County ~~'s contracted consultant~~ shall be responsible for the preparation of the necessary plans and specifications, including compliance with Minnesota State Aid requirements and all other applicable standards and policies and obtaining all approvals required in arriving at the bid specifications for all components of this project.

C. RIGHT OF WAY AND EASEMENTS

1. The County shall acquire all permanent right-of-way, permanent easements, and temporary construction easements. All permanent rights-of-way, permanent easements, and temporary construction easements will be acquired in the name of the County.
2. Any rights-of-way, permanent easements, and temporary construction 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.

D. ADVERTISEMENT AND AWARD OF CONTRACT

1. After plans and specifications for all components of this project have been approved, all permits and approvals have been obtained, and any necessary rights-of-way and easements have been acquired, the County shall advertise for construction bids or quotes.
2. Once bids are received, the City will be given the opportunity to review and evaluate the bid and provide City Council concurrence on the approval of the bids. Once City concurrence is provided, the County shall award the contract to the lowest responsible bidder.

E. CONSTRUCTION ADMINISTRATION, OBSERVATION, AND TESTING

1. Construction administration, inspection, observation, and testing for the project will be performed by the County's contracted consultant, ~~and will be paid for under the construction inspection/administration contract.~~

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F. COST PARTICIPATION ITEMS AND ESTIMATED COSTS

~~4.~~ The estimated cost participation breakdown is in accordance with "Washington County Cost Participation Policy #8001 for Cooperative Highway Improvement Projects", which is incorporated into this agreement by reference. ~~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.~~

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RIGHT OF WAY & EASEMENTS

- ~~2-1.~~ 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 pertinent acquisition costs necessary for roadway, utility, and drainage construction work

on 30th Street North, Upper 33rd Street North, ~~35th Street North~~, 36th Street North, and Laverne Avenue.

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~~3.~~ The City shall pay to the County 50 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 pertinent acquisition costs necessary for construction work on the regional drainage pond.

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~~2.~~
~~4-3.~~ 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 construction easements, title work costs, appraisal costs, relocation specialist costs, relocation costs, condemnation commissioner costs, and all pertinent acquisition costs necessary for roadway, utility, and drainage construction work along CSAH 17 (Lake Elmo Avenue), from 30th Street North to ~~CSAH 14MN Highway-5~~.

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~~5-4.~~ 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. ~~The final costs for construction will be based on actual unit prices and quantities used on each phase in accordance with this agreement.~~

DESIGN, CONSTRUCTION INSPECTION/ADMINISTRATION SERVICES, & CONSTRUCTION COSTS

~~6-1.~~ The City shall pay the County 91.2 percent of the cost invoiced to the County from the County's consultant for PRELIMINARY DESIGN of Phase 1 of the project. The City shall pay the County ~~65-656.1~~ percent of the cost invoiced to the County from the County's consultant for PRELIMINARY DESIGN of Phase 2 of the project.

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~~7-2.~~ The City shall pay the County 91.2 percent of the cost invoiced to the County from the County's consultant for FINAL DESIGN of Phase 1 of the project. The City shall pay the County ~~65-656.1~~ percent of the cost invoiced to the County from the County's consultant for FINAL DESIGN of Phase 2 of the project.

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~~8-3.~~ The City shall pay the County 91.2 percent of the cost invoiced to the County from the County's consultant for the CONSTRUCTION INSPECTION/ADMINISTRATION of Phase 1 of the project. The City shall pay the County ~~65-656.1~~ percent of the cost invoiced to the County from the County's consultant for the CONSTRUCTION INSPECTION/ADMINISTRATION of Phase 2 of the project.

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~~4.~~ The City shall pay the County an estimated 91.2 percent of the CONSTRUCTION COSTS for Phase 1 of the project as shown in Exhibit B. The City shall pay the County an estimated ~~65-656.1~~ percent of the CONSTRUCTION COSTS for Phase 2 of the project as shown in Exhibit C. These percentages are subject to change based on actual construction costs. A Total Cost Summary is presented on Table 1.

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~~9-5.~~ The final costs for construction will be based on actual unit prices and quantities used on each phase.

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<u>% Construction Contingency (est. 56.1% City Cost)</u>	<u>\$189,252.00</u>	<u>\$242,091.00</u>	<u>\$431,343.00</u>
Phase 2 Total Costs	\$3,577,530.00 <u>\$1,965,774.00</u>	\$4,758,942.00 <u>\$3,821,360.00</u>	\$8,336,472.00 <u>\$5,787,131.00</u>
Total Project Costs	\$4,628,662.00 <u>\$2,637,207.00</u>	\$10,315,856.00 <u>\$8,774,450.00</u>	\$14,944,518.00 <u>\$11,411,657.00</u>

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G. PAYMENT

~~4. After the County has awarded the construction contract for Phase 2, Exhibit C will be updated to reflect the actual contractor's unit prices and will submit a copy of the revised summary to the City.~~

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1. Right of way, preliminary design, final design, construction inspection/administration and construction costs for the City's cost share of Phase 1 and 2 projects shall be invoiced by the County to the City with no interest. The payment due dates are presented on Table 2.

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~~2.~~

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Date	Percentage	Estimated Payment
January 15 th , 2016 - PAID	10% of Estimated Phase 1 Total City Cost	\$498,866.35 \$495,309.00
June 15 th , 2016	10% of Estimated Phase 1 Total City Cost Remaining Estimated Phase 1 Total City Cost	\$5,058,047.65 \$4,457,781.00
January 15 th , 2017	20% of Estimated Phase 2 Total City Cost	\$951,788.00 \$764,272.00
June 15 th , 2017	80% of Estimated Phase 2 Total City Cost	\$3,807,154.00 \$3,057,088.00

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* A final invoice will be issued to the City for the City's share of any costs incurred related to the project during the warranty period.

~~2. The City and County shall reconcile invoices and supporting documentation prior to the County submitting an invoice to the City. Once the reconciled invoice is submitted, the City shall pay the invoice in full within 30 days. The City shall pay 100 percent of an invoice amount within 30 days of receipt. If the City is 30 days late on any payment, the entire remaining amount due of the City's cost share per phase, will be invoiced to the City with a payment date of September 15th (of the year of the missed payment).~~

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~~3. The costs for Phase 1 reflect to-date construction costs plus an estimated cost to complete.~~

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~~4. The costs for Phase 2 reflect the lowest responsible bid. Upon completion of Phase 2 construction, the County shall prepare a final cost participation summary and submit to the City. The County shall add to the City's final construction costs, construction contract amendments, any necessary adjustments for liquidated damages, and deduct City funds previously advanced for the project by the City.~~

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~~5. If the amount of the total of the payments made by the City pursuant to Section G is less than the actual cost to the City of its portion of the Project, the City agrees to pay the difference between the estimated amount paid by the City and the actual cost of the City's portion of the project.~~

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~~4. Upon completion of Phase 1 and Phase 2 the County shall prepare a final cost participation~~

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~~summary which will be based upon the contract unit prices and the actual units of work performed and shall submit a copy of this summary to the City. The County shall add to the City's final construction costs, construction contract amendments, any necessary adjustments for liquidated damages, and deduct City funds previously advanced for the project by the City. If the amount of the total of the payments made by the City pursuant to Section G is less than the actual cost to the City of its portion of the Project, the City agrees to pay the difference between the estimated amount paid by the City and the actual cost of the City's portion of the project.~~

~~5.6.~~ In the event that the City paid more in advance than the actual cost of the City's portion of the project, the County shall refund without interest the amount to the City.

H. CHANGE ORDERS AND SUPPLEMENTAL AGREEMENTS

- ~~1. Any modifications or additions to the final approved plans and/or specifications of the City's portion of the project shall be made part of the construction contract through a written amendment to the construction contract, but only after concurrence by the City Administrator, and the cost for such changes shall be appropriated as set forth in Section F of this Agreement.~~
- ~~1. Any modifications or additions to the final approved plans and/or specifications shall be made part of the construction contract by change order or by supplemental agreement, and shall be paid for as set forth in Section G of this Agreement.~~
- ~~2. Through written request, the City may request changes to the final approved plans and/or specification. Any City request which is subsequently modified or added to the final approved plans and specifications shall be made by a written amendment to this agreement, shall be made part of the construction contract by change order or supplemental agreement, and shall be paid for wholly by the City.~~

I. LIQUIDATED DAMAGES

Any liquidated damage assessed the contractor in connection with the work performed on the project shall be shared by the City and the County in the following proportion: The respective total share of construction work to the total construction cost without any deduction for liquidated damages.

J. 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.

K. 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).

L. 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.

M. 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

Mike Pearson Date
Mayor

Molly O'Rourke Date
County Administrator

~~Dean Zuleger~~ Kristina Handt
City Administrator

Approved as to form:

Assistant County Attorney

Date

Approved as to form:

City Attorney

Date

