



STAFF REPORT

DATE: July 2, 2019

CONSENT

AGENDA ITEM: Approve the Revised Cooperative Cost Share Agreement for the CSAH 19-Hudson Boulevard Intersection

SUBMITTED BY: Jack Griffin, City Engineer

REVIEWED BY: Kristina Handt, City Administrator
Sarah Sonsalla, City Attorney
Chad Isakson, Project Engineer

ISSUE BEFORE COUNCIL: Should the City Council approve the revised Cooperative Cost Share Agreement with Washington County for the CSAH-19 and Hudson Boulevard Intersection Improvements?

BACKGROUND: On June 4, 2019 the City of Lake Elmo awarded a construction contract for the CSAH-19 and Hudson Boulevard Intersection project and approved a Cooperative Agreement with Washington County to address the cost share for the improvements. The improvements include the installation of a traffic signal at CSAH-19 and Hudson Boulevard with dedicated left and right turn lanes constructed along each of the Hudson Boulevard approaches.

The Cooperative Agreement was prepared to outline the roles and responsibilities, cost split, and general terms and conditions for the project. The format of the agreement and cost split was based on Washington County's cost participation policy which includes a 50/50 cost split of the installation of the traffic light and a percentage of soft costs based on a percentage split of city improvements vs county improvements proposed on the project.

PROPOSAL DETAILS/ANALYSIS: Following the council meeting, City staff received comments from Washington County suggesting revisions to the County's share of the construction administration costs. The County will be providing, in-house, a portion of the construction administration services that pertain to the traffic signal and county project components and therefore requested the City to acknowledge the County services toward their share of the costs. City staff has therefore revised the Cooperative Cost Share Agreement that was recently approved by the council and is recommending approval of the proposed revisions.

FISCAL IMPACT: The County share of the Construction Engineering/Contract Administration Services have been reduced from \$51,515 (18% of the total Construction Engineering Services) to \$20,147 (6% of the County's share of the project construction costs). The estimated total cost for the CSAH-19 and Hudson Boulevard Intersection Improvements is \$2,760,100. The City's share of the improvements is now estimated to be \$2,282,632 (up from \$2,251,263) and Washington County's cost share is estimated to be \$477,468 (down from \$508,800).

The City intends to finance its share of the improvement costs through a combination of existing state aid funds, in the approximate amount of \$917,000, an advance request from future state aid funds, in the approximate amount of \$1,102,232, and the general fund, in the approximate amount of \$263,400. The City Council passed a resolution requesting the state aid fund advance on April 16, 2019 and the request was granted.

RECOMMENDATION: Staff is recommending that the City Council approve the revised Cooperative Cost Share Agreement with Washington County for the CSAH-19 and Hudson Boulevard Intersection Improvements. The recommended motion for this action is as follows:

“Move to approve Resolution No. 2019–045, approving the revised Cooperative Cost Share Agreement with Washington County for the CSAH 19 and Hudson Boulevard Intersection Improvements.”

ATTACHMENTS:

1. Resolution Approving the Revised Cooperative Cost Share Agreement with Washington County for the CSAH-19 and Hudson Boulevard Intersection Improvements.
2. Revised Cooperative Cost Share Agreement.

**CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA**

**RESOLUTION NO. 2019-045
A RESOLUTION APPROVING A REVISED COOPERATIVE COST
SHARE AGREEMENT WITH WASHINGTON COUNTY FOR THE
CSAH-19 AND HUDSON BOULEVARD INTERSECTION
IMPROVEMENTS**

WHEREAS, the City intends to make improvements to Hudson Boulevard from 1,000-feet west of County State Aid Highway (CSAH) 19 to 910-feet east of CSAH 19 and install a traffic signal at the intersection of CSAH 19 and Hudson Boulevard (the “Project”); and

WHEREAS, items included in the project will be paid by Washington County consistent with the County’s Cost Participation Policy; and

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

WHEREAS, the County also desires to use local funds and State Aid for these improvements; and

WHEREAS, a cooperative effort between the City and County is the appropriate method to facilitate the construction of these transportation improvements; and

WHEREAS, the City has prepared a revised Cooperative Agreement with Washington County to address the cost sharing in the project including terms for payment, and this Agreement is made pursuant to statutory authority contained in Minnesota Statute 162.17 sub.1 and Minnesota Statute 471.59.

NOW, THEREFORE, BE IT RESOLVED,

1. That the Revised Cooperative Agreement between the City of Lake Elmo and Washington County is hereby approved, and the Mayor and City Administrator are hereby authorized to execute the agreement on behalf of the City of Lake Elmo.

ADOPTED BY THE LAKE ELMO CITY COUNCIL ON THE SECOND DAY OF JULY, 2019.

CITY OF LAKE ELMO

(Seal)
ATTEST:

By: _____
Mike Pearson
Mayor

Julie Johnson
City Clerk



**COOPERATIVE AGREEMENT BETWEEN THE CITY OF
LAKE ELMO AND WASHINGTON COUNTY FOR CONSTRUCTION COST OF COUNTY STATE AID
HIGHWAY (CSAH) 19 AND HUDSON BOULEVARD INTERSECTION IMPROVEMENTS**

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."

WITNESSETH:

WHEREAS, the City intends to make improvements to Hudson Boulevard from 1,000-feet west of County State Aid Highway (CSAH) 19 to 910-feet east of CSAH 19 and install a traffic signal at the intersection of CSAH 19 and Hudson Boulevard (the "Project"); and

WHEREAS, items included in the Project require County cost participation in accordance with the Washington County Cost Participation Policy #8001 for Cooperative Highway Improvement Projects; and

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

WHEREAS, the County also desires to use local funds and State Aid for these improvements; and

WHEREAS, a cooperative effort between the City and County is the appropriate method to facilitate the construction of these transportation improvements; and

WHEREAS, this Agreement is made pursuant to statutory authority contained in Minnesota Statutes Section 162.17, subdivision 1 and Minnesota Statutes Section 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 and shall consist of this Agreement, Exhibit A (Location Map) and Exhibit B (Estimated Construction Cost and Cost Splits).

B. PLANS AND SPECIFICATION PREPARATION

1. The City shall be responsible for the preparation of all the plans and specifications for the Project, including but not limited to, compliance with all applicable standards and policies and obtaining all approvals required in formulating the bid specifications for all County and City components of this Project.
2. The following County project number has been assigned to the Project: SAP 082-619-028 (CSAH 19).
3. The following City project number has been assigned to the Project: SAP 206-120-001.

C. RIGHT OF WAY AND EASEMENTS

1. The City shall acquire all permanent rights of way, permanent easements, and temporary slope easements, which will be acquired in the name of the City.
2. Any rights of way, permanent easements, and temporary slope easements that cannot be obtained through negotiation may, at the City's discretion, be acquired by the City through eminent domain proceedings.

D. ADVERTISEMENT AND AWARD OF CONTRACT

After plans and specifications have been approved by the City, all permits and approvals obtained, and acquisition of necessary rights-of-way and easements, the City shall advertise for construction bids and, at the sole discretion of the City, award the contract to the lowest responsible bidder.

E. CONSTRUCTION ADMINISTRATION, OBSERVATION, AND TESTING

The City shall be responsible for the construction administration, inspection, and for the observation and testing for all construction items, except those items provided directly by the County.

F. COST PARTICIPATION ITEMS AND ESTIMATED COSTS

The County's cost participation is set forth in Table 1 of this section and is broken down into five categories which are: 1) Construction; 2) Design Engineering; 3) Construction Engineering/Contract Administration; 4) Right of Way; 5) County-Furnished Material.

1. **Construction**
Construction costs shall be the cost to construct the Project. The City has prepared a statement of estimated quantities and cost splits hereto attached as Exhibit B. The County shall pay to the City its share of the total cost as shown in Exhibit B and set forth in Table 1 of this section.
2. **Design Engineering**
Design engineering costs shall be professional design engineering services, project coordination, preparation of plans and specification, stakeholder engagement, geotechnical studies, and other administrative functions necessary for the Project. Based on the County's share of the construction cost, the County shall pay the prorated cost of design engineering for the entire Project as set forth in Table 1 of this section.
3. **Construction Engineering/Contract Administration**
Construction engineering/contract administration costs shall be construction observation, construction testing, construction administration, staking, conducting and recording the pre-bid, pre-construction and weekly construction meetings, reviewing monthly pay estimates, labor compliance, and other administrative functions necessary for the Project. Based on the County's share of the construction costs, the County shall pay the prorated cost of construction engineering/contract administration as set forth in Table 1 of this section.
4. **Right of Way**
Right of Way costs shall be permanent right-of-way, permanent utility and/or drainage easements, temporary easements, title work costs, appraisal costs, relocation specialist costs, relocation costs, and condemnation commissioner costs. No right-of-way cost share is required for the County.
5. **County-Furnished Material**
County-furnished material costs shall be items such as light poles, traffic signal control equipment, and street name signs which are separately procured outside of the construction contract and installed within the Project limits. The City shall pay its share of the final County-furnished material cost. The estimated amount is set forth in Table 1 of this section.

TABLE 1 – ESTIMATED COSTS Washington County Cost Summary			
ITEM	TOTAL COST	COUNTY SHARE	COUNTY COST
Construction	\$1,879,593	18%*	\$335,790
Design Engineering	\$316,161	18%*	\$63,469
Construction Engineering/Contract Administration	\$286,200	6%**	\$20,147
Right of Way	\$162,000	0%	\$0
County-Furnished Material	\$116,125	50%*	\$58,062
TOTAL ESTIMATED COST	\$2,760,079		\$477,468

* Percentage of Total Cost

** Percentage of Construction Costs

6. The costs and shares attributable to the County and payable to the City as shown in Table 1 above are merely estimated and a final reconciliation of costs as set forth in paragraph G below shall be done at the end of the Project. Actual County costs and shares are based on the following:
- Construction shall be based on the contractor's unit prices and final quantities at Project completion including all contract changes.
 - Design engineering shall be based on the contractor's unit prices at the time of contract award.
 - Construction engineering/contract administration shall be based on the contractor's unit prices at the time of contract award.
 - Right of way shall be based on the final costs to acquire right of way.
 - County-furnished material shall be based on the final costs to acquire County-furnished material.

G. PAYMENT

- Construction
 - After the City has awarded the construction contract, the City shall update Exhibit B to conform the Exhibit to the amounts in the awarded bid and shall invoice the County 10 percent of the County's estimated construction cost based on the updated Exhibit B.
 - During construction, the City shall submit to the County partial estimates of work performed by the contractor. The County shall pay to the City its share of the partial estimate as determined in section F of this Agreement.
 - Upon substantial completion of the work the City shall submit to the County a final invoice and final reconciliation of costs. The reconciliation will add or subtract contract amendments to the County's Project components, adjustments for liquidated damages pursuant to section I of this Agreement, and previous Project cost payments made by the County to the City.
- The costs set forth in Table 1 in section F above for design engineering, construction engineering/contract administration, right of way, and County-furnished material shall be invoiced separately by the City from the invoice for construction and paid by the County on a reimbursable basis.
- In the event that the County paid more in advance than the actual cost of the County's portion of the Project, the City shall refund without interest the amount to the County.
- The County shall pay 100 percent of an invoice amount within thirty (30) days of receipt.

H. CONTRACT CHANGES

Any modifications or additions to the final approved plans and/or specifications of the County'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 County's designated project manager, and the cost for such changes shall be appropriated as set forth in section F of this Agreement. County concurrence shall be received upon request and may not be unreasonably conditioned, withheld, or delayed.

I. LIQUIDATED DAMAGES

Any liquidated damages 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. CONDITIONS

The City shall not assess or otherwise recover any portion of its cost for this Project through special assessment of County-owned property.

K. CIVIL RIGHTS AND NON-DISCRIMINATION

The provisions of Minnesota Statutes Section 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.

L. WORKERS COMPENSATION

It is hereby understood and agreed that any and all employees of the County and all other persons employed by the County in the performance of construction and/or construction engineering work or services required or provided for under this Agreement shall not be considered employees of the City and that any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of said employees while so engaged and any and all claims made by any third parties as a consequence of any act or omission on the part of said County employees while so engaged on any of the construction and/or construction engineering work or services to be rendered herein shall in no way be the obligation or responsibility of the City.

M. INDEMNIFICATION

1. 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.
2. 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.
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, subdivision 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 Minnesota Statutes Section 471.59, subdivision 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 Statutes Section 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 Minnesota Statutes Section 466.04, subdivision 1(a).

N. DATA PRACTICES

All data collected, created, received, maintained, disseminated, or used for any purposes in the course of this Agreement is governed by the Minnesota Government Data Practices Act, Minnesota Statutes 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.

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

WASHINGTON COUNTY

Chair Date
Board of Commissioners

Molly O'Rourke Date
County Administrator

Approved as to form:

Assistant County Attorney Date

CITY OF LAKE ELMO

Mayor Date

City Administrator Date

Approved as to form:

City Attorney Date