

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM: Tom Bergeson, Director of Public Works

SUBJECT: Limited Use Permit (LUP)

DATE: November 5, 2015

BACKGROUND

The 'Welcome to Cannon Falls' sign is scheduled to be re-installed on the south end of town; to complete this process we are asking for council approval for the Limited Use Permit (LUP). The purpose of the LUP is to set parameters for installation of the sign.

REQUESTED COUNCIL ACTION

Motion to approve the Limited Use Permit to move forward with the installation of the 'Welcome to Cannon Falls' sign.

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
LIMITED USE PERMIT**

C.S. 2506 (T.H. 52)
County of Goodhue
LUP # 2506-0020
Permittee: City of Cannon Falls
Terminates: 10/31/2025 or when
jurisdictional ownership of the
Area is transferred from State
ownership to Cannon Falls
Township

In accordance with Minnesota Statutes Section 161.434, the State of Minnesota, through its Commissioner of Transportation, ("MnDOT"), hereby grants a Limited Use Permit (the "LUP") to the city of Cannon Falls ("Permittee"), to use the area within the right of way of Trunk Highway No. 52 as shown in red on Exhibit "A", (the "Area") attached hereto and incorporated herein by reference. This LUP is executed by the Permittee pursuant to resolution, a certified copy of which is attached hereto as Exhibit B.

Municipal ID Entrance Sign

The Permittee's use of the Area is limited to the construction and maintenance of a Municipal Identification Entrance Sign (the "Facility") and the use thereof may be further limited by Minn. Stat. §173.02 Subd. 6(a) and §173.025. The Permittee will be allowed access only from the non-trunk highway side of the Area for the purpose of constructing and maintaining the Facility. When working on the Area, the Permittee will conduct its operations in accordance with the requirements of the "Minnesota Field Manual on Temporary Traffic Control Zone Layouts". No advertising of any nature is permitted on the Facility except that the Permittee may incorporate a short promotional slogan which has historically been used in the identification of the Permittee.

In addition, the following special provisions shall apply:

SPECIAL PROVISIONS

1. TERM. This LUP terminates the earlier of the following:
 - (a) 11:59PM on October 31, 2025;
 - (b) Upon the transfer of jurisdictional ownership of the Area to Cannon Falls Township; or
 - (c) Upon ninety (90) days written notice from MnDOT to Permittee cancelling this LUP

("Expiration Date"). This LUP will not be renewed except as provided below.

Provided this LUP has not expired or terminated, MnDOT may renew this LUP for a period of up to ten (10) years, provided Permittee delivers to MnDOT, not later than ninety (90) days prior to the Expiration Date, a written request to extend the term. Any extension of the LUP term will be under the same terms and conditions in this LUP, provided:

- (a) At the time of renewal, MnDOT will review the Facility and Area to ensure the Facility and Area are compatible with the safe and efficient operation of the highway and the Facility and Area are in good condition and repair. If, in MnDOT's sole determination, modifications and repairs to the Facility and Area are needed, Permittee will perform such work as outlined in writing in an amendment of this LUP; and
- (b) Permittee will provide to MnDOT a certified copy of the resolution from the applicable governmental body authorizing the Permittee's use of the Facility and Area for the additional term.

If Permittee's written request to extend the term is not timely given, the LUP will expire on the Expiration Date.

- 2. **REMOVAL.** Upon early termination, at the Permittee's sole cost and expense, Permittee will:
 - (a) Remove the Facility and restore the Area to a condition satisfactory to the MnDOT District Engineer; and
 - (b) Surrender possession of the Area to MnDOT.

If, without MnDOT's written consent, Permittee continues to occupy the Area after the Expiration Date or earlier termination, Permittee will remain subject to all conditions, provisions, and obligations of this LUP, and further, Permittee will pay all costs and expenses, including attorney's fees, in any action brought by MnDOT to remove the Facility and the Permittee from the Area.

- 3. **CONSTRUCTION.** The construction, maintenance, and supervision of the Facility shall be at no cost or expense to MnDOT.

Before construction of any kind, the plans for such construction shall be approved in writing by MnDOT's District Engineer. Approval in writing from MnDOT's District Engineer shall be required for any changes from the approved plan.

The Permittee shall construct the Facility at the location shown in the attached Exhibit "A" subject to verification by MnDOT that the construction geometrics and procedures result in a Facility that is compatible with the safe and efficient operation of the highway.

Upon completion of the construction of the Facility, the Permittee shall restore all disturbed slopes and ditches in such manner that drainage, erosion control and aesthetics are perpetuated.

The Permittee shall preserve and protect all utilities located on the lands covered by this LUP at no expense to MnDOT and it shall be the responsibility of the Permittee to call the Gopher State One Call System at 1-800-252-1166 at least 48 hours prior to performing any excavation.

- 4. **MAINTENANCE AND ACCESS.** Any and all maintenance of the Facility shall be provided by the Permittee at its sole cost and expense, including, but not limited to, plowing and removal of snow, mowing, aesthetic maintenance, installation and removal of regulatory signs. No signs shall be placed on any MnDOT or other governmental agency sign post within the Area. MnDOT will not mark obstacles for users on trunk highway right of way.

Access to the site for purposes of construction and ongoing maintenance will not be permitted from the trunk highway side of the area except by special request and issuance of a Work Permit by MnDOT. Access to the site is granted from the non-trunk highway side along the township road.

5. **USE.** Other than as identified and approved by MnDOT, no permanent structures or advertising devices in any manner, form or size shall be allowed on the Area. No commercial activities shall be allowed to operate upon the Area.

Installation of lighting or any other utility in the Area requires application by the City of a separate MnDOT utility permit.

Any use permitted by this LUP shall remain subordinate to the right of MnDOT to use the property for highway and transportation purposes. This LUP does not grant any interest whatsoever in land, nor does it establish a permanent park, recreation area or wildlife or waterfowl refuge Facility that would become subject to Section 4 (f) of the Federal-Aid Highway Act of 1968, nor does this LUP establish a Bikeway or Pedestrian way which would require replacement pursuant to Minnesota Statutes Section 160.264. No rights to relocation benefits are established by this LUP.

This LUP is non-exclusive and is granted subject to the rights of others, including, but not limited to public utilities which may occupy the Area.

6. **APPLICABLE LAWS.** This LUP does not release the Permittee from any liability or obligation imposed by federal law, Minnesota Statutes, local ordinances, or other agency regulations relating thereto and any necessary permits relating thereto shall be applied for and obtained by the Permittee.
7. **CIVIL RIGHTS.** The Permittee, for itself, its successors, and assigns, agrees to abide by the provisions of Title VI Appendix C of the Civil Rights Act of 1964, which provides in part that no person in the United States, shall on the grounds of race, color, or national origin, be excluded from, or denied use of any Facility.
8. **SAFETY.** MnDOT shall retain the right to limit and/or restrict any activity, including the parking of vehicles and assemblage of Facility users, on the highway right of way over which this LUP is granted, so as to maintain the safety of both the motoring public and Facility users.
9. **ASSIGNMENT.** No assignment of this LUP is allowed.
10. **IN WRITING.** Except for those which are set forth in this LUP, no representations, warranties, or agreements have been made by MnDOT or Permittee to one another with respect to this LUP.
11. **ENVIRONMENTAL.** The Permittee shall not dispose of any materials regulated by any governmental or regulatory agency onto the ground, or into any body of water, or into any container on the State's right of way. In the event of spillage of regulated materials, the Permittee shall notify in writing MnDOT's District Engineer and shall provide for cleanup of the spilled material and of materials contaminated by the spillage in accordance with all applicable federal, state and local laws and regulations, at the sole expense of the Permittee.
12. **MECHANIC'S LIENS.** The Permittee (for itself, its contractors, subcontractors, its materialmen, and all other persons acting for, through or under it or any of them), covenants that no laborers',

mechanics', or materialmens' liens or other liens or claims of any kind whatsoever shall be filed or maintained by it or by any subcontractor, materialmen or other person or persons acting for, through or under it or any of them against the work and/or against said lands, for or on account of any work done or materials furnished by it or any of them under any agreement or any amendment or supplement thereto.

13. NOTICES. All notices which may be given, by either party to the other, will be deemed to have been fully given when served personally on MnDOT or Permittee or when made in writing addressed as follows:

to Permittee at:

City of Cannon Falls
918 River Road
Cannon Falls, MN 55009

and to MnDOT at:

State of Minnesota
Department of Transportation
District 6 Right of Way
2900 48th Street NW
Rochester, MN 55901

The address to which notices are mailed may be changed by written notice given by either party to the other.

14. INDEMNITY. Permittee shall defend, indemnify, hold harmless and release the State of Minnesota, its Commissioner of Transportation and employees and its successors and assigns, from and against:
- (a) all claims, demands, and causes of action for injury to or death of persons or loss of or damage to property (including Permittee's property) occurring on the Facility or connected with Permittee's use and occupancy of the Area, regardless of whether such injury, death, loss or damage is caused in part by the negligence of State of Minnesota or is deemed to be the responsibility of State of Minnesota because of its failure to supervise, inspect or control the operations of Permittee or otherwise discover or prevent actions or operations of Permittee giving rise to liability to any person.
 - (b) claims arising or resulting from the temporary or permanent termination of Facility user rights on any portion of highway right of way over which this permit is granted;
 - (c) claims resulting from temporary or permanent changes in drainage patterns resulting in flood damages;
 - (d) any laborers', mechanics', or materialmens' liens or other liens or claims of any kind whatsoever filed or maintained for or on account of any work done or materials furnished; and

(e) any damages, testing costs and clean-up costs arising from spillage of regulated materials attributable to the construction, maintenance or operation of the Facility.

MINNESOTA DEPARTMENT
OF TRANSPORTATION

CITY OF CANNON FALLS

RECOMMENDED FOR APPROVAL

By: _____
District Engineer

By _____

Its _____

Date _____

And _____

APPROVED BY:

Its _____

COMMISSIONER OF TRANSPORTATION

By: _____
Director, Office of Land Management

Date _____

The Commissioner of Transportation
by the execution of this LUP
certifies that this LUP is
necessary in the public interest
and that the use intended is for
public purposes.