

TO: MAYOR AND CITY COUNCIL
FROM: NEIL JENSEN, City Administrator
SUBJECT: Resolution 2481, MNDOT Snow Joint Powers Agreement
MEETING DATE: May 19, 2020

BACKGROUND:

In Order for the City of Cannon Falls to collect for snow removal during the 2019-2020 snow season we need to approve the MNDOT Snow Joint Powers Agreement. This agreement is set up different then in the past and I understand that the Public Works Commission has reviewed this last year but it didn't make it to City Council. If we approve the attached resolution and agreement it calls out the payments for 5 years including last year. The City of Cannon Falls is unique in that we have to deal with 2 MNDOT Districts (District 6 and Metro) in which both have different style of snow agreements.

Last years payment is \$2,320.00 and will be available for collection if approved at the May 19th meeting.

STAFF RECOMMENDATION

Please approve Resolution 2481 and the MNDOT Snow Joint Powers Agreement #1035558 as attached with this memo.

REQUESTED COUNCIL ACTION

Make a motion to approve Resolution 2481

**CITY OF CANNON FALLS
GOODHUE COUNTY, MINNESOTA**

RESOLUTION NUMBER 2481

RESOLUTION APPROVING MNDOT SNOW JOINT POWERS AGREEMENT

WHEREAS, joint snow removal by municipalities and the Minnesota Department of Transportation (MnDOT) on state roads is standard policy; and

WHEREAS, it is in the best interest of the City of Cannon Falls to enter into a Snow Removal Agreement with MnDOT.

IT IS RESOLVED, that the City of Cannon Falls enter into MnDOT Agreement No. 1035558 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for payment by the State to the City of the State's share of the costs of the snow and ice removal on Trunk Highway No. 19 from 3rd Street and 7th Street within the corporate City limits.

BE IT FURTHER RESOLVED that the Mayor and the City Administrator are authorized to execute the Agreement and any amendments to the Agreement.

Adopted by the City Council of the City of Cannon Falls on this 19th day of May, 2020.

John O. Althoff, Mayor

ATTEST: _____
Neil L. Jensen, City Administrator

CERTIFICATION

I certify that the above Resolution is an accurate copy of the Resolution adopted by the Council of the City of Cannon Falls at an authorized meeting held on the 19th day of May, 2020, as shown by the minutes of the meeting in my possession.

(Signature)

(Print Name)

(Title)

Subscribed and sworn to me this _____ day of _____, 2020.

Notary Public _____

My Commission Expires _____

Date: October 24, 2019

Dave Maroney
City Clerk
918 Red River Road
Cannon Falls, MN 55009

RE: Proposed Agreement No. 1035558
City of Cannon Falls
State Funds
State cost compensation for snow and ice removal work performed by the local on T.H. 19.

Dear Mr. Maroney:

District 6 will be pursuing a new method of payment for snow and ice removal work performed on the Trunk Highway by the City for the upcoming snow season and into the future. An agreement between the City and MnDOT will now be needed to pay for snow and ice removal. Rental rate contracts used in the past will no longer be utilized for payment. Data was collected for all non-State Aid Cities (19) in the District. Actual costs over the past six years of snow and ice removal work were analyzed and, with that information, a cost per lane mile was determined.

Transmitted herewith in duplicate is a proposed agreement with the City of Cannon Falls. This agreement provides for payment by the State to the City for snow and ice removal performed by the City on the Trunk Highway.

Kindly present this agreement to the City Council for their approval and execution, which includes original signatures of the City Council authorized City officers, on the two copies of the agreement. Also required are two original copies of a resolution passed by the City Council authorizing its officers to sign the agreement in its behalf. A suggested form of such resolution is enclosed.

Please return the two original signed copies of the agreement and resolution, once they have been executed by the City. A copy will be returned to the City when fully executed.

Any questions or concerns please feel free to contact me.

Sincerely,

Mark Panek
ADE – Operations Owatonna

cc: Craig Lenz File

STATE OF MINNESOTA
 JOINT POWERS AGREEMENT
 FOR NON-PROFESSIONAL/TECHNICAL SERVICES

This Agreement is between the State of Minnesota, acting through its Commissioner of Transportation (“State”) and CANNON FALLS acting through its CITY COUNCIL (“Governmental Unit”).

Recitals

1. Minnesota Statutes §471.59 authorizes State and Governmental Unit to enter into this Agreement.
2. State is in need of snow removal on portions of Trunk Highway 19 within the city limits of Cannon Falls.
3. Governmental Unit represents that it is duly qualified and agrees to perform all services described in this Agreement to the satisfaction of State.

Agreement

1. Term of Agreement; Survival of Terms; Incorporation of Exhibits

- 1.1. **Effective Date:** This Agreement will be effective on Sept 20, 2019, or the date State obtains all required signatures under Minnesota Statutes Section §16C.05, subdivision 2, whichever is later. The Governmental Unit must not begin work under this Agreement until this Agreement has been fully executed and the Governmental Unit has been notified by State’s Authorized Representative to begin work.
- 1.2. **Expiration Date:** This Agreement will expire on June 30, 2024, or when all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3. **Survival of Terms:** All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this Agreement, including, without limitation, the following clauses: 6. Liability; 7. State Audits; 8. Government Data Practices; 9. Intellectual Property Rights; and 10. Venue.
- 1.4. **Exhibits:** Exhibits A is attached and incorporated into this Agreement.

2. Scope of Work and Deliverables

- 2.1. The Governmental Unit will: Provide forces to perform snow and ice removal operations on portions of Trunk Highway 19 within the City Limits of Cannon Falls, from 3rd Street and 7th Street for a distance of 0.58 lane miles. The City will perform work in accordance with the “Standard Terms” contained in Exhibit A.

3. Payment

- 3.1. Consideration. State will pay for all services performed by the Governmental Unit under this Agreement as follows:

Total Obligation. The total obligation of State for all compensation and reimbursements to Governmental Unit will not exceed \$12,317.20.

Annual Cost per lane mile plus 3% increase annually

FY	Lane mile	Cost	Total
2020	0.58	\$4,000.00	\$2,320.00
2021	0.58	\$4,120.00	\$2,389.60
2022	0.58	\$4,243.60	\$2,461.29
2023	0.58	\$4,370.91	\$2,535.13
2024	0.58	\$4,502.04	\$2,611.18
Total Agreement Amount			\$12,317.20

3.1.1. Compensation. State will pay the Governmental Unit on a Fiscal Year Lump Sum basis with invoices submitted no later than June 1 of that particular Fiscal Year.

3.2. Terms of Payment

3.2.1. Invoices. The Governmental Unit must submit invoices for payment. The Governmental Unit will submit invoices for payment in accordance with the following schedule: Yearly and before June 1 of that particular fiscal year.

3.2.2. State's Payment Requirements. State will promptly pay all valid obligations under this Agreement as required by Minnesota Statutes §16A.124. State will make undisputed payments no later than 30 days after receiving the Governmental Unit's invoices for services performed. If an invoice is incorrect, defective or otherwise improper, State will notify the Governmental Unit within 10 days of discovering the error. After State receives the corrected invoice, State will pay the Governmental Unit within 30 days of receipt of such invoice.

3.2.3. Invoice Package Submittal. The Governmental Unit must submit the signed invoice for review and payment, to the State's Project Manager. Invoices will not be considered "received" within the meaning of Minnesota Statutes §16A.124 until the signed documents are received by State's Project Manager.

- i. Each invoice must contain the following information: MnDOT Agreement Number, the Governmental Unit invoice number (sequentially numbered), the Governmental Unit billing and remittance address, if different from business address, and the Governmental Unit signature attesting that the invoiced services and costs are new and that no previous charge for those services and goods has been included in any prior invoice.

4. Agreement Personnel

4.1. State's Authorized Representative will be:

Name/Title: Mark Panek / Assistant District Engineer
Address: 1010 21st Avenue Northwest, Owatonna, MN 55060
Telephone: 507-446-5503
E-Mail: mark.panek@state.mn.us

State's Authorized Representative, or his/her successor, will monitor the Governmental Unit's performance and has the authority to accept or reject the services provided under this Agreement.

4.2. State's Project Manager will be:

Name/Title: Tim Zierden / Maintenance Superintendent
Address: 1010 21st Avenue Northwest, Owatonna, MN 55060
Telephone: 507-446-5504
E-Mail: tim.zierden@state.mn.us

State's Project Manager, or his/her successor, has the responsibility to monitor the Governmental Unit's performance and progress. State's Project Manager will sign progress reports, review billing statements, make recommendations to State's Authorized Representative for acceptance of the Governmental Unit's goods or services and make recommendations to State's Authorized Representative for certification for payment of each Invoice submitted for payment.

4.3. The Governmental Unit's Authorized Representative will be:

Name/Title: Dave Maroney / City Clerk
Address: 918 Red River Road, Cannon Falls, MN 55009
Telephone: 507-263-3954
E-Mail: dmaroney@cannonfallsmn.gov

5. Assignment, Amendments, Waiver and Contract Complete

- 5.1. Assignment. The Governmental Unit may neither assign nor transfer any rights or obligations under this Agreement without the prior consent of State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.
- 5.2. Amendments. Any Amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the Original Agreement, or their successors in office.
- 5.3. Waiver. If State fails to enforce any provision of this Agreement, that failure does not waive the provision or its right to subsequently enforce it.
- 5.4. Contract Complete. This Agreement contains all prior negotiations and agreements between State and the Governmental Unit. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

6. Indemnification

- 6.1. In the performance of this Agreement by the Governmental Unit, or the Governmental Unit's agents or employees, the Governmental Unit must indemnify, save, and hold harmless State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by State, to the extent caused by the Governmental Unit's: 1) Intentional, willful, or negligent acts or omissions; or 2) Actions that give rise to strict liability; or 3) breach of contract or warranty.
- 6.2. The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of State's sole negligence. This clause will not be construed to bar any legal remedies the Governmental Unit may have for State's failure to fulfill its obligation under this Agreement.

7. State Audits

- 7.1. Under Minnesota Statutes §16C.05, subdivision 5, the Governmental Unit's books, records, documents and accounting procedures and practices relevant to this Agreement are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

8. Government Data Practices

- 8.1. The Governmental Unit and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by State under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by the Governmental Unit under this Agreement. The civil remedies of Minnesota Statutes §13.08 apply to the release of the data referred to in this clause by either the Governmental Unit or State.

9. Intellectual Property Rights

- 9.1. Intellectual Property Rights. State owns all rights, title and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks and service marks in the Works and Documents created and paid for under this Agreement. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes and disks conceived, reduced to practice, created or originated by the Governmental Unit, its employees, agents and subcontractors, either individually or jointly with others in the performance of this Agreement. Works includes "Documents." Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks or other materials, whether in tangible or electronic forms, prepared by the Governmental Unit, its employees, agents or subcontractors, in the performance of this Agreement. The Documents will be the exclusive property of State and the Governmental Unit upon completion or cancellation of this Agreement must immediately return all such Documents to State. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Governmental Unit assigns all right, title and interest it may have in the Works and the Documents to State. The Governmental Unit must, at

the request of State, execute all papers and perform all other acts necessary to transfer or record State's ownership interest in the Works and Documents.

9.2. Obligations

- 9.2.1. Notification. Whenever any invention, improvement or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Governmental Unit, including its employees and subcontractors, in the performance of this Agreement, the Governmental Unit will immediately give State's Authorized Representative written notice thereof, and must promptly furnish State's Authorized Representative with complete information and/or disclosure thereon.
- 9.2.2. Representation. The Governmental Unit must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of State, and that neither the Governmental Unit, nor its employees, agents nor subcontractors retain any interest in and to the Works and Documents. The Governmental Unit represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 6, the Governmental Unit will indemnify, defend, to the extent permitted by the Attorney General, and hold harmless State, at the Governmental Units expense, from any action or claim brought against State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Governmental Unit will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Governmental Unit's or State's opinion is likely to arise, the Governmental Unit must, at State's discretion, either procure for State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of State will be in addition to and not exclusive of other remedies provided by law.

10. Venue

- 10.1. Venue for all legal proceedings out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

11. Termination; Suspension

- 11.1. Termination. State or the Commissioner of Administration may terminate this Agreement at any time, with or without cause, upon 30 days' written notice to the Governmental Unit.
- 11.2. Termination for Insufficient Funding. State may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Governmental Unit. State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Governmental Unit will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. State will not be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. State must provide the Governmental Unit notice of the lack of funding within a reasonable time of State's receiving that notice.
- 11.3. Suspension. State may immediately suspend this Agreement in the event of a total or partial government shutdown due to failure to have an approved budget by the legal deadline. Work performed by the Governmental Unit during a period of suspension will be deemed unauthorized and undertaken at risk of non-payment.

12. Additional Provisions

- 12.1. NONE

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Governmental Unit

The Governmental Unit certifies that the appropriate person(s) have executed the contract on behalf of the Governmental Unit as required by applicable articles, bylaws, resolutions or ordinances.

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

STATE ENCUMBRANCE VERIFICATION

The individual certifies funds have been encumbered as required by Minn. Stat. 16A.15 and 16C.05

By: _____

Date: _____

SWIFT Contract # _____

SWIFT Purchase Order # _____

COMMISSIONER OF TRANSPORTATION

By: _____

Title: _____

Date: _____

COMMISSIONER OF ADMINISTRATION

By: _____

Date: _____

EXHIBIT A – STANDARD TERMS

STANDARD TERMS FOR ROADWAY MAINTENANCE

1. The Other Agency will perform roadway maintenance in accordance with the specifications and guidelines in the current "MnDOT Maintenance Manual."
2. Unless otherwise provided in this Agreement, the Other Agency is not required to perform extraordinary maintenance or reconstruction. The Other Agency should notify MnDOT immediately if it becomes aware of any maintenance, not covered by this Agreement that should be addressed immediately to prevent the risk of serious injury to the public.
3. The Other Agency will perform traffic control in accordance with Minnesota Manual on Uniform Traffic Control Devices.

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