

TO: MAYOR AND CITY COUNCIL
FROM: NEIL JENSEN, City Administrator
SUBJECT: MNDOT Agreement #1048285 Highway 19 Project
MEETING DATE: November 2, 2021

BACKGROUND

A couple months ago MNDOT Representatives attended a council meeting to discuss the Highway 19 Project and seek approval of the costs associated with the project. The attached agreement outlines that discussion and finalizes the costs.

STAFF RECOMMENDATION

Please consider and pass Resolution 2586, entering into agreement #1048285 (Mill and Overlay of Highway 19) with MNDOT.

REQUESTED COUNCIL ACTION

Please make a motion to approve Resolution 2586, Approving MNDOT agreement #1048285.

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
And
CITY OF CANNON FALLS
COOPERATIVE CONSTRUCTION
AGREEMENT**

State Project Number (S.P.):	<u>2503-32</u>	Estimated Amount Receivable
Trunk Highway Number (T.H.):	<u>19=100</u>	<u>\$79,319.11</u>
State Aid Project Number (S.A.P.):	<u>025-620-001</u>	
Lighting System Feed Point No.:	<u>CITY</u>	
Signal System ID:	<u>1735167</u>	

This Agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("State") and the City of Cannon Falls acting through its City Council ("City").

Recitals

1. The State will perform grading, bituminous mill and overlay, signals, ADA improvement construction and other associated construction upon, along, and adjacent to Trunk Highway No. 19 from 220 feet west of 4th Street to Almond Street in Cannon Falls according to State-prepared plans, specifications, and special provisions designated by the State as State Project No. 2503-32 (T.H. 19=100) ("Project"); and
2. The City wishes to participate in the costs of the City-owned lighting system and other City-owned utility adjustment construction and associated construction engineering; and
3. Agreement No. 1048286 between the State and Goodhue County will address the County's cost and maintenance for this Project; and
4. Traffic Control Signal System Agreement No. 63870 between the State, Goodhue County, and the City addresses signal system maintenance responsibilities; and
5. Minnesota Statutes § 161.45, subdivision 2, allows for City-owned utility relocation to be included in a State construction contract, and payment by the City for such relocation according to applicable statutes and rules for utilities on trunk highways; and
6. Minnesota Statutes § 161.20, subdivision 2 authorizes the Commissioner of Transportation to make arrangements with and cooperate with any governmental authority for the purposes of constructing, maintaining, and improving the trunk highway system.

Agreement

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

- 1.1. **Effective Date.** This Agreement will be effective on the date the State obtains all signatures required by Minnesota Statutes § 16C.05, subdivision 2.
- 1.2. **Expiration Date.** This Agreement will expire when all obligations have been satisfactorily fulfilled.
- 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: 3. Maintenance by the City; 9. Liability; Worker

Compensation Claims; 12. State Audits; 13. Government Data Practices; 14. Governing Law; Jurisdiction; Venue; and 16. Force Majeure. The terms and conditions set forth in Article 4. Signal System and Emergency Vehicle Preemption System Operation and Maintenance will survive the expiration of this Agreement, but may be terminated by another Agreement between the parties.

- 1.4. **Plans, Specifications, and Special Provisions.** Plans, specifications, and special provisions designated by the State as State Project No. 2503-32 (T.H. 19=100) are on file in the office of the Commissioner of Transportation at St. Paul, Minnesota, and incorporated into this Agreement by reference ("Project Plans").
- 1.5. **Exhibits.** Preliminary Schedule "I" is on file in the office of the City Administrator and attached and incorporated into this Agreement.

2. Construction by the State

- 2.1. **Contract Award.** The State will advertise for bids and award a construction contract to the lowest responsible bidder according to the Project Plans.
- 2.2. **Direction, Supervision, and Inspection of Construction.**
 - A. **Supervision and Inspection by the State.** The State will direct and supervise all construction activities performed under the construction contract, and perform all construction engineering and inspection functions in connection with the contract construction. All contract construction will be performed according to the Project Plans.
 - B. **Inspection by the City.** The City participation construction covered under this Agreement will be open to inspection by the City. If the City believes the City participation construction covered under this Agreement has not been properly performed or that the construction is defective, the City will inform the State District Engineer's authorized representative in writing of those defects. Any recommendations made by the City are not binding on the State. The State will have the exclusive right to determine whether the State's contractor has satisfactorily performed the City participation construction covered under this Agreement.
- 2.3. **Plan Changes, Additional Construction, Etc.**
 - A. The State will make changes in the Project Plans and contract construction, which may include the City participation construction covered under this Agreement, and will enter into any necessary addenda and change orders with the State's contractor that are necessary to cause the contract construction to be performed and completed in a satisfactory manner.
 - B. The City may request additional work or changes to the work in the plans as part of the construction contract. Such request will be made by an exchange of letter(s) with the State. If the State determines that the requested additional work or plan changes are necessary or desirable and can be accommodated without undue disruption to the project, the State will cause the additional work or plan changes to be made.
 - C. The State reserves the right to invoice the City for the cost of any additional City requested work and plan changes, including associated construction engineering, before the completion of the contract construction.
- 2.4. **Satisfactory Completion of Contract.** The State will perform all other acts and functions necessary to cause the construction contract to be completed in a satisfactory manner. Acceptance by the State of the completed contract construction will be final, binding, and conclusive upon the City as to the satisfactory completion of the contract construction.

2.5. Permits.

- A.** The City will submit to the State's Utility Engineer an original permit application for all utilities owned by the City to be constructed hereunder that are upon and within the trunk highway right-of-way. Applications for permits will be made on State form "Application For Utility Permit On Trunk Highway Right-Of-Way" (Form 2525).

2.6. Replacement of Castings. Adjustments to certain City-owned facilities, including but not limited to, valve boxes and frame and ring castings, may be performed by the State's contractor under the construction contract. The City will furnish the contractor with new units and/or parts for those in place City-owned facilities when replacements are required and not covered by a contract pay item, without cost or expense to the State or the contractor, except for replacement of units and/or parts broken or damaged by the contractor.

3. Maintenance by the City

Upon completion of the project, the City will provide the following without cost or expense to the State:

- 3.1. Parking Lanes.** Maintenance of T.H. 19 parking lanes. Maintenance includes, but is not limited to, snow, ice, and debris removals, repair or replacement of parking-related signing or pavement markings, and any other maintenance activities determined by the State and according to accepted City maintenance practices.
- 3.2. Storm Sewers.** Routine maintenance of any storm sewer facilities construction. Routine maintenance includes, but is not limited to, removal of sediment, debris, vegetation and ice from grates and catch basins, and any other maintenance activities necessary to preserve the facilities and to prevent conditions such as flooding, erosion, or sedimentation, this also includes informing the District Maintenance Engineer of any needed repairs.
- 3.3. Municipal Utilities.** Maintenance of any municipal-owned utilities construction, without cost or expense to the State.
- 3.4. Sidewalks.** Maintenance of any sidewalk construction, including stamped and colored concrete sidewalk (if any) and pedestrian ramps. Maintenance includes, but is not limited to, snow, ice and debris removal, patching, crack repair, panel replacement, cross street pedestrian crosswalk markings, vegetation control of boulevards (if any), and any other maintenance activities necessary to perpetuate the sidewalks in a safe, useable, and aesthetically acceptable condition.
- 3.5. Lighting.** Maintenance and ownership of any lighting facilities construction. Maintenance of electrical lighting systems includes everything within the system, from the point of attachment to the power source or utility, to the last light on the feed point, including but not limited to re-lamping of lighting units or replacing of LED luminaires, repair or replacement of all damaged luminaire glassware, loose connections, luminaires when damaged or when ballasts fail, photoelectric control on luminaires, defective starter boards or drivers, damaged fuse holders, blown fuses, knocked down poles including wiring within the poles, damaged poles, pullboxes, underground wire, damaged foundations, equipment pad, installation of approved splices or replacement of wires, repair or extending of conduit, lighting cabinet maintenance including photoelectric cell, electrical distribution system, Gopher State One Call (GSOC) locates, and painting of poles and other equipment. The City will be responsible for the hook up cost and application to secure an adequate power supply to the service pad or pole and will pay all monthly electrical service expenses necessary to operate the lighting facility.
- 3.6. Additional Drainage.** No party to this Agreement will drain any additional drainage volume into the storm sewer facilities constructed under the construction contract that was not included in the drainage for

which the storm sewer facilities were designed, without first obtaining written permission to do so from the other party.

4. Signal System and Emergency Vehicle Preemption System Operation and Maintenance

All operation and maintenance terms, including timing and power provisions, in Traffic Control Signal Agreement No. 63870 dated March 6, 1987, for the existing traffic control signals on T.H. 19 (Main Street West) at T.H. 20 (4th Street North)/County State Aid Highway No. 20 (4th Street South) will remain in full force and effect.

5. Basis of City Cost

5.1. Schedule "I". The Preliminary Schedule "I" includes all anticipated City participation construction items and the construction engineering cost share covered under this Agreement, and is based on engineer's estimated unit prices.

5.2. City Participation Construction. The City will participate in the following at the percentages indicated. The construction includes the City's proportionate share of item costs for mobilization, field office, and traffic control.

A. 100 Percent will be the City's rate of cost participation in all of the lighting system and utility adjustment construction. The construction includes, but is not limited to, those construction items tabulated on Sheet No. 2 of the Preliminary Schedule "I".

5.3. Construction Engineering Costs. The City will pay a construction engineering charge equal to 8 percent of the total City participation construction covered under this Agreement.

5.4. Plan Changes, Additional Construction, Etc. The City will share in the costs of construction contract addenda for the City participation construction covered under this Agreement and any additional City requested work and plan changes.

The State reserves the right to invoice the City for the cost of any construction contract addenda and any additional City requested work and plan changes, including associated construction engineering, before the completion of the contract construction.

5.5. Liquidated Damages. All liquidated damages assessed the State's contractor in connection with the construction contract will result in a credit shared by each party in the same proportion as their total construction cost share covered under this Agreement is to the total contract construction cost before any deduction for liquidated damages.

6. City Cost and Payment by the City

6.1. City Cost. \$79,319.11 is the City's estimated share of the costs of the contract construction and the 8 percent construction engineering cost share as shown in the Preliminary Schedule "I". The Preliminary Schedule "I" was prepared using estimated quantities and unit prices, and may include any credits or lump sum costs. Upon award of the construction contract, the State will prepare a Revised Schedule "I" based on construction contract unit prices, which will replace and supersede the Preliminary Schedule "I" as part of this agreement.

6.2. Conditions of Payment. The City will pay the State the City's total estimated construction and construction engineering cost share, as shown in the Revised Schedule "I", after the following conditions have been met:

A. Execution of this Agreement and transmittal to the City, including a copy of the Revised Schedule "I".

B. The City's receipt of a written request from the State for the advancement of funds.

6.3. Acceptance of the City's Cost and Completed Construction. The computation by the State of the amount due from the City will be final, binding, and conclusive. Acceptance by the State of the completed contract construction will be final, binding, and conclusive upon the City as to the satisfactory completion of the contract construction.

6.4. Final Payment by the City. Upon completion of all contract construction and upon computation of the final amount due the State's contractor, the State will prepare a Final Schedule "I" and submit a copy to the City. The Final Schedule "I" will be based on final quantities, and include all City participation construction items and the construction engineering cost share covered under this Agreement. If the final cost of the City participation construction exceeds the amount of funds advanced by the City, the City will pay the difference to the State without interest. If the final cost of the City participation construction is less than the amount of funds advanced by the City, the State will refund the difference to the City without interest.

The State and the City waive claims for any payments or refunds less than \$5.00 according to Minnesota Statutes § 15.415.

7. Authorized Representatives

Each party's Authorized Representative is responsible for administering this Agreement and is authorized to give and receive any notice or demand required or permitted by this Agreement.

7.1. The State's Authorized Representative will be:

Name, Title: Malaki Ruranika, Cooperative Agreements Engineer (or successor)
 Address: 395 John Ireland Boulevard, Mailstop 682, St. Paul, MN 55155
 Telephone: (651) 366-4634
 E-Mail: malaki.ruranika@state.mn.us

7.2. The City's Authorized Representative will be:

Name, Title: Neil Jensen, City Administrator (or successor)
 Address: 918 River Road, Cannon Falls, MN 55009
 Telephone: (507) 263-9304
 E-Mail: njensen@cannonfallsmn.gov

8. Assignment; Amendments; Waiver; Contract Complete

8.1. Assignment. No party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other party and a written assignment agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.

8.2. 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.

8.3. Waiver. If a party fails to enforce any provision of this Agreement, that failure does not waive the provision or the party's right to subsequently enforce it.

8.4. Contract Complete. This Agreement contains all prior negotiations and agreements between the State and the City. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

9. Liability; Worker Compensation Claims

- 9.1.** Each party is responsible for its own acts, omissions, and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of others and the results thereof. Minnesota Statutes § 3.736 and other applicable law govern liability of the State. Minnesota Statutes Chapter 466 and other applicable law govern liability of the City.
- 9.2.** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

10. Nondiscrimination

Provisions of Minnesota Statutes § 181.59 and of any applicable law relating to civil rights and discrimination are considered part of this Agreement.

11. Title VI/Non-discrimination Assurances

The City agrees to comply with all applicable US DOT Standard Title VI/Non-Discrimination Assurances contained in DOT Order No. 1050.2A, and in particular Appendices A and E, which can be found at: https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=11149035. The City will ensure the appendices and solicitation language within the assurances are inserted into contracts as required. The State may conduct a review of the City's compliance with this provision. The City must cooperate with the State throughout the review process by supplying all requested information and documentation to the State, making City staff and officials available for meetings as requested, and correcting any areas of non-compliance as determined by the State.

12. State Audits

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

13. Government Data Practices

The City and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the City 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 City or the State.

14. Governing Law; Jurisdiction; Venue

Minnesota law governs the validity, interpretation, and enforcement of this Agreement. Venue for all legal proceedings arising out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

15. Termination; Suspension

- 15.1. *By Mutual Agreement.*** This Agreement may be terminated by mutual agreement of the parties.
- 15.2. *Termination for Insufficient Funding.*** The 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 performance of contract construction under the Project. Termination must be by written or fax notice to the City.

15.3. Suspension. In the event of a total or partial government shutdown, the State may suspend this Agreement and all work, activities, and performance of work authorized through this Agreement.

16. Force Majeure

No party will be responsible to the other for a failure to perform under this Agreement (or a delay in performance), if such failure or delay is due to a force majeure event. A force majeure event is an event beyond a party's reasonable control, including but not limited to, unusually severe weather, fire, floods, other acts of God, labor disputes, acts of war or terrorism, or public health emergencies.

[The remainder of this page has been intentionally left blank]

CITY OF CANNON FALLS

The undersigned certify that they have lawfully executed this contract on behalf of the Governmental Unit as required by applicable charter provisions, resolutions, or ordinances.

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

DEPARTMENT OF TRANSPORTATION

Recommended for Approval:

By: _____
(District Engineer)

Date: _____

Approved:

By: _____
(State Design Engineer)

Date: _____

COMMISSIONER OF ADMINISTRATION

By: _____
(With Delegated Authority)

Date: _____

INCLUDE COPY OF RESOLUTION APPROVING THE AGREEMENT AND AUTHORIZING ITS EXECUTION.

PRELIMINARY SCHEDULE "I"

Agreement No. 1048285

City of Cannon Falls

S.P. 2503-32 (T.H. 19=100)

Preliminary: September 14, 2021

S.A.P. 025-620-001

State Funds

Grading, bituminous mill and overlay, signals, and ADA improvement construction to start approximately May 2022 under

State Contract No. ____ with ____

located on T.H. 19 from 220 feet west of 4th Street to Almond Street in Cannon Falls

CITY COST PARTICIPATION

S.P. 2503-32 Lighting and Utilities (From Sheet No. 2)	73,443.62
Subtotal	\$73,443.62
Construction Engineering (8%)	5,875.49
(1) Total City Cost	\$79,319.11

(1) Amount of advance payment as described in Article 6 of the Agreement (estimated amount)

CITY OF CANNON FALLS

RESOLUTION

IT IS RESOLVED that the City of Cannon Falls enter into MnDOT Agreement No. 1048285 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for payment by the City to the State of the City's share of the costs of the lighting system and utility adjustment construction and other associated construction to be performed upon, along, and adjacent to Trunk Highway No. 19 from 220 feet west of 4th Street to Almond Street within the corporate City limits under State Project No. 2503-32 (T.H. 19=100).

IT IS FURTHER RESOLVED that the Mayor and the _____
(Title)
are authorized to execute the Agreement and any amendments to the Agreement.

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 _____ day of _____, 2021, as shown by the minutes of the meeting in my possession.

Subscribed and sworn to me this _____ day of _____, 2021
Notary Public _____
My Commission Expires _____

_____ (Signature)
_____ (Type or Print Name)
_____ (Title)

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

RESOLUTION NUMBER 2586

**A RESOLUTION APPROVING MNDOT AGREEMENT NO. 1048285 WITH THE
MINNESOTA DEPARTMENT OF TRANSPORTATION**

WHEREAS, that the City of Cannon Falls enter into MnDOT Agreement No. 1048285 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for payment by the City to the State of the City's share of costs of the lighting system and utility adjustment construction and other associated construction to be performed upon, along, and adjacent to Trunk Highway No. 19 from 220 feet west of 4th Street to Almond Street within the corporate City limits under State Project No. 2503-32 (T.H. 19=100).

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Cannon Falls, Goodhue County, Minnesota, that the City of Cannon Falls shall enter into MnDOT Agreement No. 1048285 with the State of Minnesota, Department of Transportation.

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 2nd
DAY OF NOVEMBER, 2021.**

SIGNED:

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 City Council of the City of Cannon Falls, Minnesota at an authorized meeting held on the 2nd day of November, 2021, as shown by the minutes of the meeting in my possession.

Neil L. Jensen, City Administrator