



Le Sueur County, MN

Tuesday, November 15, 2016

Board Meeting

Item 7

10:15 a.m. Darrell Pettis, County Administrator / Engineer

RE: MnDOT Cooperative Agreement and Resolution, Intersection Lighting

RE: WCA Bank Closure

Staff Contact:

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
And
LE SUEUR COUNTY
COOPERATIVE CONSTRUCTION

LIGHTING MAINTENANCE
AGREEMENT**

Trunk Highway Number (T.H.):	<u>22</u>
State Project No.	<u>4012-40</u>
Lighting Feed Point	<u>Le Sueur County</u>

This Agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("State") and Le Sueur County acting through its Board of Commissioners ("County").

Recitals

1. The State will install, in coordination with the County, new Highway Lighting Systems ("Lighting System") on Trunk Highway No. 22 at County Highway No. 41 (East Pearl Street) and on Trunk Highway No. 22 at County Highway No. 45 according to State-prepared typical drawings, standard plates, specifications and special provisions (SP 4012-40); and
2. The State contract will furnish and install screw-in bases, 9-40 standard light poles and luminaires according to State prepared typical drawings, standard plates, specifications and special provisions for the new Lighting System; and
3. The County will provide for the operation, maintenance and electrical energy of the new Lighting System; and
4. 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: 4. Maintenance by the County; 7. Liability; Worker Compensation Claims; 9. State Audits; 10. Government Data Practices; 11. Governing Law; Jurisdiction; Venue; and 13. Force Majeure.

1.4. *Typical drawings, Standard Plates, Specifications, Special Provisions.* State prepared typical drawings, standard plates, specifications and special provisions are on file in the office of the County's Engineer and incorporated into this Agreement by reference. ("Project Plans")

1.5. *Exhibits.* Exhibits "A" and "B", showing the location of the new Lighting System, are attached and incorporated into this Agreement.

2. Construction by the State

2.1. *Lighting System Construction.* The State, with its own resources and equipment, will install a new Lighting Systems on T.H. 22 at CR 41 and at T.H. 22 at CR 45 according to the Project Plans:

2.2. *Direction, Supervision and Inspection of Construction.* The State will direct and supervise all Lighting System construction activities including final light pole locations. All Lighting System construction will be performed according to the Project Plans.

3. State Furnished Materials

None.

4. Maintenance by the County

Operation, maintenance and electrical energy responsibilities will be as follows for the Lighting Systems on Trunk Highway No. 22 at CR. 41(East Pearl Street) shown in Exhibit "A" and Trunk Highway No. 22 at CR 45 shown in Exhibit "B".

4.1. *Power.* The County will pay all monthly electrical service expenses necessary to operate the Lighting System.

4.2. *Lighting System Maintenance.* The County will provide maintenance and ownership of the 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.

4.3. *Right of Way Access.* The State authorizes the County to enter upon State right of way to perform the maintenance activities described in this Agreement.

4.4. *Utility Permit.* After completion of the Lighting System construction, the County will submit to the State's Utility Engineer an original permit application for the new County owned Lighting System constructed 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 TP2525).

5. 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.

5.1. The State's Authorized Representative will be:

Name/Title: Scott M. Thompson (or successor)
Address: 2151 Bassett Drive, Mankato MN
Telephone: 507-304-6156
E-Mail: scott.m.thompson@state.mn.us

5.2. The County's Authorized Representative will be:

Name/Title: Darrel Pettis (or successor)
Address: 88 South Park Ave., Le Center MN
Telephone: 507-357-2251
E-Mail: dpettis@co.le-sueur.mn.us

6. Assignment; Amendments; Waiver; Contract Complete

- 6.1. *Assignment.*** Neither 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.
- 6.2. *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.
- 6.3. *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.
- 6.4. *Contract Complete.*** This Agreement contains all prior negotiations and agreements between the State and the County. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

7. Liability; Worker Compensation Claims

- 7.1.** 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 County.
- 7.2.** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

8. Nondiscrimination

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

9. State Audits

Under Minnesota Statutes § 16C.05, subdivision 5, the County's books, records, documents, and 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.

10. Government Data Practices

The County 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 County 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 County or the State.

11. 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.

12. Termination; Suspension

12.1. *By Mutual Agreement.* This Agreement may be terminated by mutual agreement of the parties.

12.2. *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.

13. Force Majeure

Neither 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.

LE SUEUR COUNTY

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 Traffic Engineer)

Date: _____

Approved: _____

By: _____
(District Engineer)

Date: _____

COMMISSIONER OF ADMINISTRATION

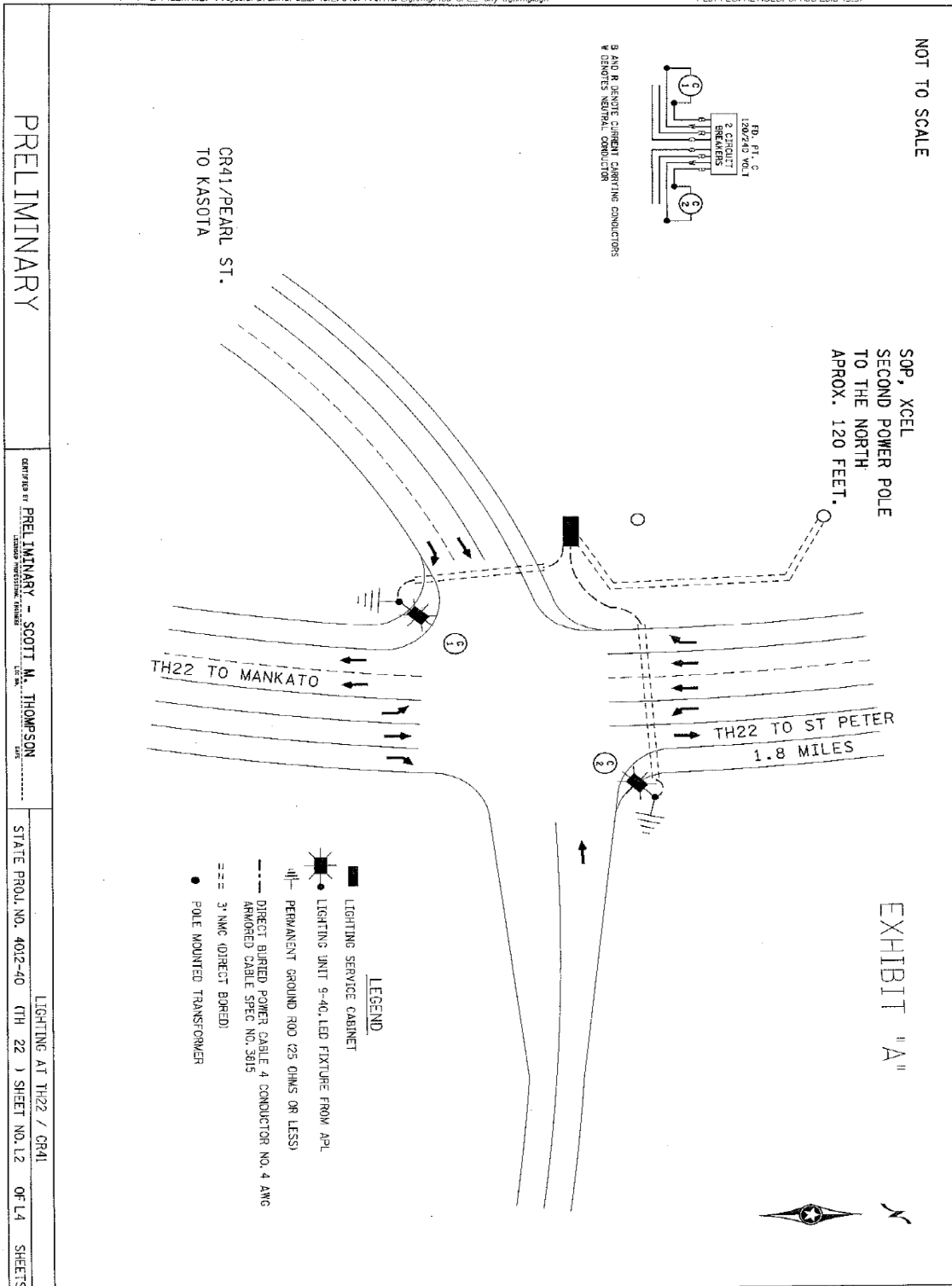
By: _____
(With delegated authority)

Date: _____

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

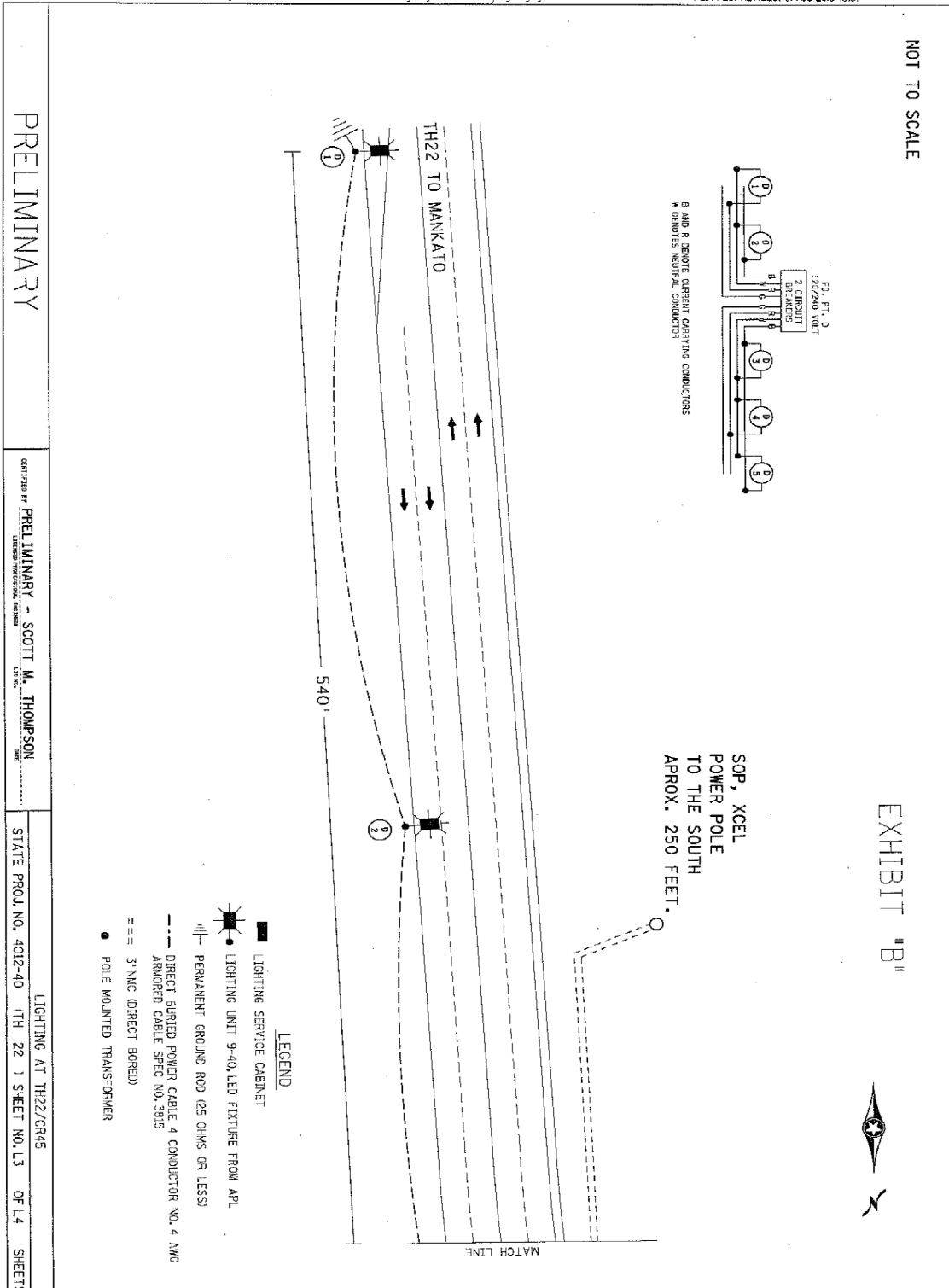
DISTRICT #: 7 - Mankato/Window
 USER NAME: bcd/ld
 PATH & FILENAME: Projects/DT_MKD/022/402/040/Traffic/Lighting/169 of 22 city lighting.dgn

PLOTTED/REVISED: 01-AUG-2016 13:37



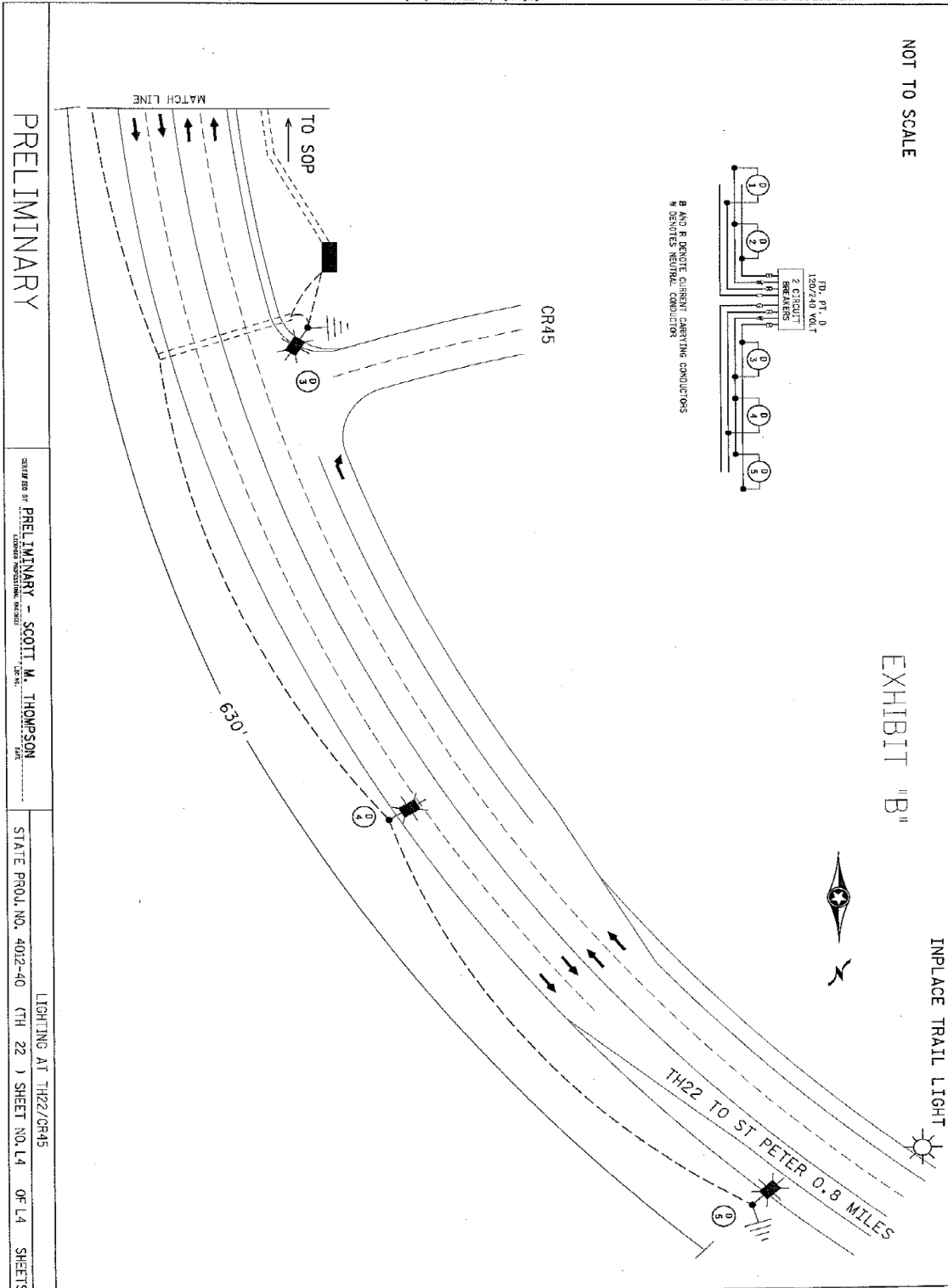
DISTRICT #: 7 - Mankato/Window
 USER NAME: bechled
 PATH & FILENAME: Projects\DT_MKO\022\4012\040\Traffic/Lighting\169.dwg at 22 city lighting.dgn

PLOTTED/REVISED: 01-AUG-2016 13:37



DISTRICT: 7 - Markata/Windom
 USER NAME: bechtel
 PATH & FILENAME: Projects\DT_MKO\022\4012\040\Traffic\Lighting\169 of 22.dwg Lighting.dgn

PLOTTED/REVISED: 01-AUG-2016 13:41



LE SUEUR COUNTY

RESOLUTION

IT IS RESOLVED that Le Sueur County enter into MnDOT Agreement No. 1026568 with the State of Minnesota, Department of Transportation for the following purposes:

To establish maintenance responsibilities for the Highway Lighting Systems located at the intersection of TH 22 and Co. Rd. 41 and at TH 22 and Co. Rd. 45 under State Project No. 4012-40.

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

CERTIFICATION

I certify that the above Resolution is an accurate copy of the Resolution adopted by the Board of Commissioners of Le Sueur County at an authorized meeting held on the _____ day of _____, 2016, as shown by the minutes of the meeting in my possession.

Subscribed and sworn to before me this
_____ day of _____, 2016

Notary Public _____

My Commission Expires _____

NOTARY
STAMP

(Signature)

(Type or Print Name)

(Title)



Local Road Wetland Replacement Program: Notification of Wetland Bank Service Area Closure

November 1, 2016

Effective December 2, 2016, the following Wetland Bank Service Areas will be closed and until further notice, the Board of Water and Soil Resources (BWSR) will not provide wetland replacement for Local Road Wetland Replacement Program (LRWRP) eligible road projects due to a lack of available wetland replacement credits:

- Bank Service Area 4 – Upper Red River
- Bank Service Area 6 – St. Croix River

Wetland replacement through BWSR's LRWRP is provided to eligible county, city and township road projects on a watershed basis using Wetland Bank Service Area (BSA) boundaries (see attached figure) to manage the allocation of replacement credits. These two bank service areas have a zero credit balance, and therefore BWSR will not be able to provide wetland replacement credits at the time an eligibility determination is approved by a Technical Evaluation Panel (TEP) or a permit application is submitted to the U.S. Army Corps of Engineers (Corps). The Corps requires that the source of wetland replacement credits be identified during their review of a permit application, and that Corps approved wetland credits be debited from a wetland bank account prior to or concurrent with the wetland impacts of a project. The LRWRP cannot be a source of wetland credits for wetland impacts in BSAs with a zero credit balance.

BWSR is identifying BSAs with a zero credit balance as "closed" since there are no credits available, and no funding available to develop new credits, that can be used to offset wetland impacts from eligible projects in those BSAs.

Note that closure of BSAs to the use of BWSR-supplied wetland credits does not affect the process by which local road authorities apply and report qualifying impacts to BWSR according to MN Rule 8420.0544, the process for TEP review, or the exemption for qualifying projects from the replacement plan requirements of State law under the LRWRP. However, because of the lack of LRWRP credits in these BSAs, local road authorities in these areas will have to work directly with the Corps to identify and obtain appropriate wetland replacement credits to satisfy Corps' permit requirements. Replacement could be required under other State programs as well, such as the Public Waters Permit Program administered by the Department of Natural Resources.

BWSR will continually evaluate the availability of wetland credits in each BSA and will take action to open and/or close BSAs in response to changing levels of credit availability in the LRWRP. County, city, and township transportation authorities, as well as other state and federal agencies, will be notified of any future action to open or close BSAs.

Additional information on the status of the LRWRP is available on the BWSR website at http://www.bwsr.state.mn.us/wetlands/wetlandbanking/road_replacement.html.

Please contact Tim Smith, BWSR Wetland Bank Coordinator, at 651-600-7554 or tim.smith@state.mn.us for more information.

Wetland Bank Service Areas

With
Major Watersheds &
County Boundaries

