



Le Sueur County, MN

Tuesday, April 28, 2015

Board Meeting

Item 6

10:20 a.m. Darrell Pettis, County Administrator

RE: TH 22 & CR 101 Lighting Agreement

RE: TH 169 and CSAH 28 MNDOT Agreement

RE: Proposal for Contract Administration TH 169 and CSAH 28

RE: Le Sueur / Waseca Library Board, Judy Graham, effective January 1st, 2015

RE: Data Practice Policy

RE: Construction Agreement

Staff Contact:



Minnesota Department of Transportation

District 7

2151 Bassett Drive
Mankato, MN 56001-6888

Office Tel:(507) 304-6100

Fax:(507) 304-6119

April 16, 2015

To: Darrell Pettis, P.E.
Le Sueur County Engineer
88 South Park Dr.
Le Center, MN 56057

Subject: Proposed Lighting Agreement No. 1000561
Le Sueur County
S.P. 4012-40
Intersection Lighting System

Dear Mr. Pettis:

Transmitted herewith in duplicate is a proposed agreement with Le Sueur County. This agreement provides for installation by the State of Minnesota of an intersection lighting system at the intersection of Trunk Highway 22 and County Road 101 to be maintained thereafter by Le Sueur County.

Kindly present this agreement to the Board of County Commissioners for their approval and execution that includes original signatures of the County Board authorized officers on all copies of the agreement. Also required are two original copies of a resolution passed by the County Board authorizing its officers to sign the agreement on its behalf. A suggested form of such resolution is enclosed. A third copy of the agreement is provided for your use until you receive a "fully executed" copy.

It is requested that the executed agreement and resolutions (two originals of each) be returned to me. A copy will be returned to the County when fully executed.

Sincerely,

Trent Robbins
D7 Project Management

Enc. Proposed Agreement (2)
Suggested Resolution (2)

cc: Maryanne Kelly-Sonnek – M.S. 682
File

An Equal Opportunity Employer



**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
And
LE SUEUR COUNTY
LIGHTING MAINTENANCE
AGREEMENT**

Trunk Highway Number (T.H.): 22
Control Section Number (C.S.): 4012
Lighting Feed Point Le Sueur

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, a new Highway Lighting System ("Lighting System") on Trunk Highway No. 22 at County Road No. 101 (Squirrel's Nest Road) according to State-prepared typical drawings, standard plates, specifications and special provisions ("Project"); and
2. County will provide for the operation, maintenance and electrical energy of the new Lighting System; and
3. 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.** Exhibit "A", showing the location of the new Lighting System, is 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 System on T.H. 22 at County Road 101 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

The State will furnish screw-in bases, 9-40 standard light poles and luminaires for the new Lighting System according to the Project Plans at no cost or expense to the County.

4. Maintenance by the County

Operation, maintenance and electrical energy responsibilities will be as follows for the Lighting System on Trunk Highway No. 22 at County Road No. 101 (Squirrel's Nest Road) shown in Exhibit "A".

- 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, District Traffic Engineer (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: Darrell Pettis, Le Sueur County Engineer (or successor)

Address: 88 South Park Ave., Le Center MN
Telephone: 507-357-8200
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

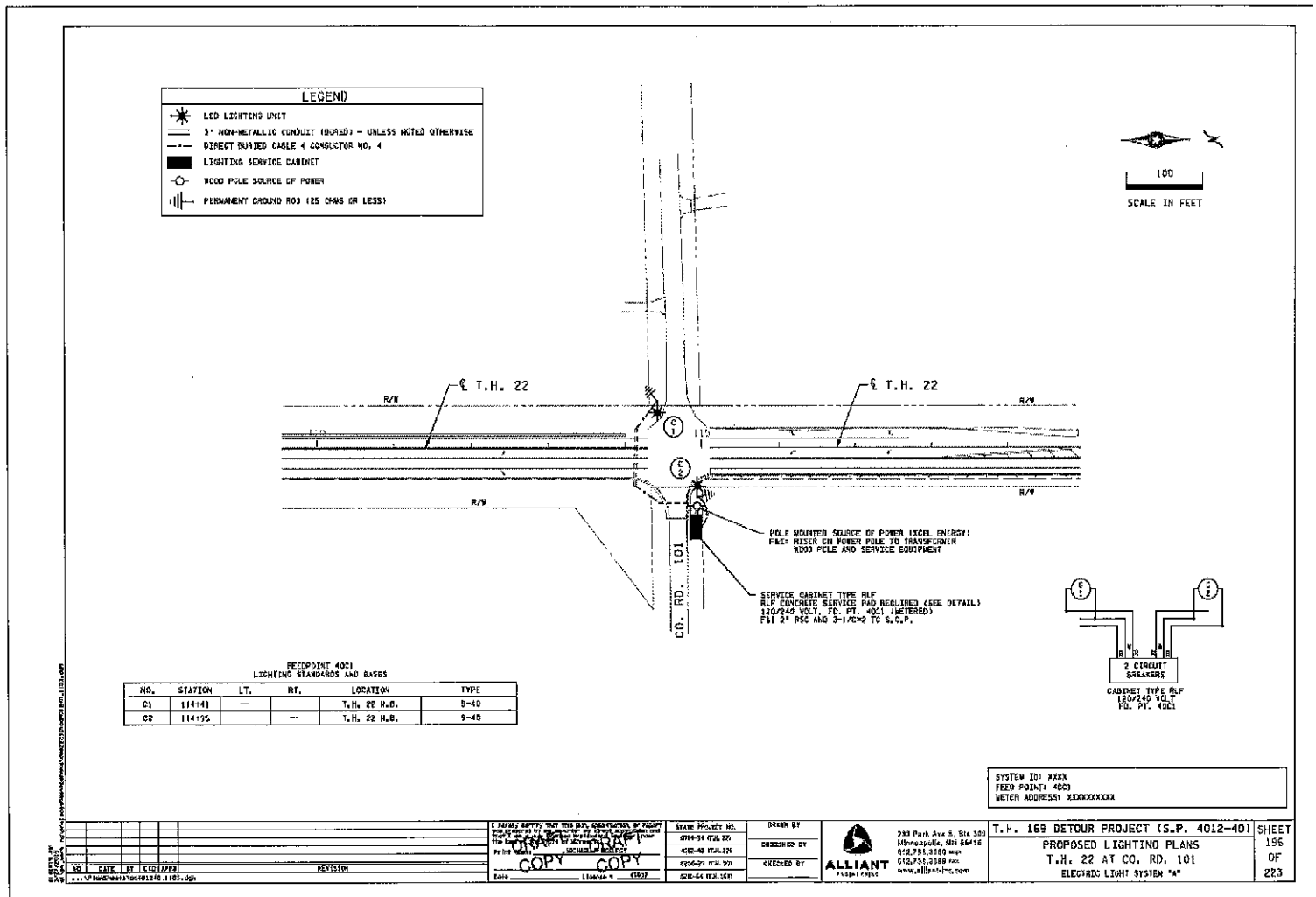
The County and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the County under this Agreement.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

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

Exhibit "A"



LE SUEUR COUNTY

RESOLUTION

IT IS RESOLVED that Le Sueur County enter into MnDOT Agreement No. 1000561 with the State of Minnesota, Department of Transportation for the following purposes:

To establish maintenance responsibilities for the Highway Lighting System located at the intersection of TH 22 and Co. Rd. 101 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 _____, 2015, as shown by the minutes of the meeting in my possession.

Subscribed and sworn to before me this _____ day of _____, 2015

Notary Public _____

My Commission Expires _____

NOTARY
STAMP

(Signature)

(Type or Print Name)

(Title)

LE SUEUR COUNTY

RESOLUTION

IT IS RESOLVED that Le Sueur County enter into MnDOT Agreement No. 1000487 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for payment by the State to the County of the State's share of the costs of the grading, bituminous paving, curb and gutter, drainage improvements and lighting construction and other associated construction to be performed upon, along and adjacent to Trunk Highway No. 169 from 900 feet north of Doppy Lane to 1,050 feet north of County State Aid Highway No. 28 within the corporate limits of the City of Le Sueur under State Project No. 4013-54 (T.H. 169=005).

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 _____, 2015, as shown by the minutes of the meeting in my possession.

Subscribed and sworn to before me this _____ day of _____, 2015

Notary Public _____

My Commission Expires _____

NOTARY
STAMP

(Signature)

(Type or Print Name)

(Title)



BOLTON & MENK, INC.®

Consulting Engineers & Surveyors

12224 Nicollet Avenue • Burnsville, MN 55337

Phone (952) 890-0509 • Fax (952) 890-8065

www.bolton-menk.com

April 20, 2015

Darrell Pettis
Le Sueur County
88 South Park Ave.
Le Center, MN 56057

**RE: Proposal for CA/CI Professional Services
TH 169 – Le Sueur Hill Project, Le Sueur, MN**

Dear Mr. Pettis:

Bolton & Menk, Inc. is pleased to submit this proposal to Le Sueur County to provide Contract Administration and Construction Oversight for the TH 169 Le Sueur Hill Project in Le Sueur, MN.

Bolton & Menk will provide the staff, materials, transportation, and the necessary supplies and equipment to perform the Construction Administration, Construction Inspection, Construction Staking, and Materials Testing for this project. We understand that the County is seeking a partner to complete this project in a manner that will minimize County staff time. We have assembled a project team that will provide you the technical expertise to complete the project in accordance with plans and specifications.

The construction administration/inspection team we propose for this project includes Shane Koehn, who is a senior Engineering Technician, Josh Howe as the Project Engineer/Contract Administrator, myself as the Project Manager, and Braun Intertec as the material testing consultant. Their full resumes are available upon your request.

We have estimated that the construction project will require full-time inspection over an anticipated 16 week construction schedule. Full-time is based on 50 hour work weeks (include travel time). We would judge the work as we go depending upon conditions encountered, the nature of the work, and the observed workmanship and cooperation of the contractors.

SCOPE OF BASIC SERVICES

Based on our comprehensive understanding of the project we propose to provide the following services:

1. Attend meetings, including the preconstruction, all construction meetings, and project closure.
2. Track, review, and approve or direct for approval all Contractor's submittals, including shop drawings, RFIs or claims.
3. Full-time Observation: We propose to provide a full time inspector on the project site during the anticipated four month construction project (July-October, 2015). He will document all construction activities, be available to discuss the project with property owners, and verify compliance with the plans and specifications/special provisions. This includes review of traffic control, erosion control, and all construction activity and field labor compliance interviews.
4. We have estimated that we will need 12 site trips to provide the necessary construction staking for the contractor. Our experienced field staff will assist in minimizing the number of trips, however do to various circumstances such as contractor error or public disturbances the number of trips to the site are difficult to determine.
5. Review the Contractor's compliance with the State Prevailing Wage Laws. Review and approve request to sublets, and process Contractor's monthly EEO compliance documents.
6. Maintain daily diaries of all construction activities.
7. Document and coordinate approvals of construction contract changes through Change Orders, Work Orders, or Supplemental Agreements.

DESIGNING FOR A BETTER TOMORROW

Bolton & Menk is an equal opportunity employer



8. Maintain an open communication with the City of Le Sueur, Le Sueur County and MnDOT District 7.
9. Prepare partial pay estimates every 30 days and a final pay estimate upon completion of the project.
10. Material Testing Services:
 - Soils – Nuclear Density Tests on embankment and utility backfill.
 - DCP tests on select granular borrow and aggregate base material.
 - Moisture content tests at time of compaction on backfill materials.
 - Gradation Tests on coarse filter aggregate, fine filter aggregate, select granular borrow, aggregate base and surfacing materials.
 - Standard Proctor tests on backfill and fill materials.
 - Preliminary and final grading and base reports, random sampling locations report.
 - Perform slump, temperature and air content tests on the plastic concrete prior to placement.
 - Cast 4-inch by 8-inch concrete cylinders
 - Compressive Strength testing of cylinders
 - Weekly Concrete Report
 - Collect one verification sample per mix per day of production. Perform quality assurance tests on these samples.
 - Mark pavement core locations and observe contractor's coring and core testing.

We have attached a breakdown of our estimate of total costs for this project. Our estimate includes all costs for the requested services for this project including labor and mileage. Thank you again for the opportunity work with Le Sueur County on this project and submit this letter proposal and cost estimate. If you have any questions or concerns please feel free to contact me and we can review our scope and/or assumptions.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Darrick K. Anderson".

Darrick K. Anderson, P.E.
Senior Project Manager

Encl: Fee Estimate

CLIENT: Le Sueur County		BOLTON & MENK INC.					
PROJECT: TH 169 - Le Sueur Hill CA/CI							
TASK NO.	WORK TASK DESCRIPTION	Project Manager Darrick Anderson	Project Engineer Josh Howe	Lead Inspector Shane Koehnen	Project Surveyor Janelle Fowlds	Field Crew	Total Cost
1	Project Management	96	16	0	24	0	\$16,720
2	Contract Administration	32	344	108	0	0	\$46,900
3	Construction Observation	0	0	840	0	0	\$105,000
4	Survey	0	0	0	0	140	\$15,400
TOTAL HOURS		128	360	948	24	140	
HOURLY BILLING RATE		\$130	\$85	\$125	\$120	\$110	
TOTAL		\$16,640	\$30,600	\$118,500	\$2,880	\$15,400	
TOTAL FEE							
		\$184,020					
		Additional Services Cost					
		Material Testing \$30,100					
		Total Estimated Additional Services Cost \$30,100					
		TOTAL FEE (with Estimated Additional Services Costs)					
		\$214,120					

Le Sueur County Data Practices Policy Members of the Public

Right to Access Public Data

The Government Data Practices Act (Minnesota Statutes, Chapter 13) presumes that all government data are public unless a state or federal law says the data are not public. Government data is a term that means all recorded information a government entity has, including paper, email, DVDs, photographs, etc.

The Government Data Practices Act also provides Le Sueur County must keep all government data in a way that makes it easy for you, as a member of the public, to access public data. You have the right to look at (inspect), free of charge, all public data that we keep. You also have the right to get copies of public data. The Government Data Practices Act allows us to charge for copies. You have the right to look at data, free of charge, before deciding to request copies.

How to Make a Data Request

To look at data or request copies of data that Le Sueur County keeps, make a written request. Make your request for data to the appropriate individual listed in the Data Practices Contacts on page 3. You may make your request for data by mail, fax, or email, using the data request form on page 5.

If you choose not to use the data request form, your request should include:

- that you, as a member of the public, are making a request for data under the Government Data Practices Act, Minnesota Statutes, Chapter 13;
- whether you would like to look at the data, get copies of the data, or both; and
- a clear description of the data you would like to inspect or have copied.

Le Sueur County cannot require you, as a member of the public, to identify yourself or explain the reason for your data request. However, depending on how you want us to process your request (if, for example, you want us to mail you copies of data), we may need some information about you. If you choose not to give us any identifying information, we will provide you with contact information so you may check on the status of your request. In addition, please keep in mind that if we do not understand your request and have no way to contact you, we will not be able to begin processing your request.

How We Respond to a Data Request

Upon receiving your request, we will work to process it.

- If we do not have the data, we will notify you, in writing, as soon as reasonably possible.
- If we have the data, but the data are not public, we will notify you as soon as reasonably possible and state which specific law says the data are not public.
- If we have the data, and the data are public, we will respond to your request appropriately and promptly, within a reasonable amount of time by doing one of the following:
 - arrange a date, time, and place to inspect data, for free, if your request is to look at the data, or
 - provide you with copies of the data as soon as reasonably possible. You may choose to pick up your copies, or we will mail or fax them to you. If you want us to send you the copies, you will need to provide us with an address or fax number. We will provide electronic copies (such as email or CD-ROM) upon request if we keep the data in electronic format.

Information about copy charges is on page 4. We also will arrange for you to pre-pay for the copies.

If you do not understand some of the data (technical terminology, abbreviations, or acronyms), please let us know. We will give you an explanation if you ask.

The Government Data Practices Act does not require us to create or collect new data in response to a data request if we do not already have the data, or to provide data in a specific form or arrangement if we do not keep the data in that form or arrangement. (For example, if the data you request are on paper only, we are not required to create electronic documents to respond to your request.) If we agree to create data in response to your request, we will work with you on the details of your request, including cost and response time.

In addition, the Government Data Practices Act does not require us to answer questions that are not requests for data.

Requests for Summary Data

Summary data are statistical records or reports that are prepared by removing all identifiers from private or confidential data on individuals. The preparation of summary data is not a means to gain access to private or confidential data. We will prepare summary data if you make your request in writing and pre-pay/pay for the cost of creating the data. Upon receiving your written request – you may use the data request form on page 5 – we will respond within ten business days with the data or details of when the data will be ready and how much we will charge.

Data Practices Contacts

Responsible Authority

Darrell Pettis, Le Sueur County
88 South Park Ave, Le Center, MN 56057
Telephone: 507-357-2251; Fax: 507-357-6375

Data Practices Compliance Official

David Tietz, Sheriff's Office
Carla Mador
88 South Park Ave, Le Center, MN 56057
Telephone: 507-357-2251; Fax: 507-357-6375

Brent Christian, Attorney's Office
88 South Park Ave, Le Center, MN 56057
Telephone: 507-357-2251; Fax: 507-357-6375

Sharon Budin, Recorder's Office
88 South Park Ave, Le Center, MN 56057
Telephone: 507-357-2251; Fax: 507-357-6375

Pam Simonette, Auditor/Treasurer's Office
88 South Park Ave, Le Center, MN 56057
Telephone: 507-357-2251; Fax: 507-357-6375

Shayne Bender, Assessor's Office
88 South Park Ave, Le Center, MN 56057
Telephone: 507-357-2251; Fax: 507-357-6375

Susan Rynda, Human Services
88 South Park Ave, Le Center, MN 56057
Telephone: 507-357-2251; Fax: 507-357-6375

Cindy Shaughnessy, Public Health
88 South Park Ave, Le Center, MN 56057
Telephone: 507-357-2251; Fax: 507-357-6375

Jim Gorgart, Veterans Services
88 South Park Ave, Le Center, MN 56057
Telephone: 507-357-2251; Fax: 507-357-6375

Cindy Westerhouse, Human Resources
88 South Park Ave, Le Center, MN 56057
Telephone: 507-357-2251; Fax: 507-357-6375

Copy Costs – Members of the Public

Le Sueur County charges members of the public for copies of government data. These charges are authorized under Minnesota Statutes, section 13.03, subdivision 3(c).

You must pay for the copies before we will give them to you.

For 100 or Fewer Paper Copies – 25 cents per page

100 or fewer pages of black and white, letter or legal size paper copies cost 25¢ for a one-sided copy, or 50¢ for a two-sided copy.

Most Other Types of Copies – Actual cost

The charge for most other types of copies, when a charge is not set by statute or rule, is the actual cost of searching for and retrieving the data, and making the copies or electronically transmitting the data (e.g. sending the data by email).

In determining the actual cost of making copies, we factor in employee time, the cost of the materials onto which we are copying the data (paper, CD, DVD, etc.), and mailing costs (if any). If your request is for copies of data that we cannot reproduce ourselves, such as photographs, we will charge you the actual cost we must pay an outside vendor for the copies.

The cost of employee time to search for data, retrieve data, and make copies is based on the hourly rate of the employee.

If, because of the subject matter of your request, we find it necessary for a higher-paid employee to search for and retrieve the data, we will calculate the search and retrieval portion of the copy charge at the higher salary/wage.

**Le Sueur County
Data Request Form
Members of the Public**

Date of request: _____

I am requesting access to data in the following way:

☐ Inspection

☐ Copies

☐ Both inspection and copies

Note: inspection is free but Le Sueur County will charge for copies as indicated on page 4.

These are the data I am requesting:

Describe the data you are requesting as specifically as possible. If you need more space, please use the back of this form.

Contact Information

Name: _____

Address: _____

Phone number: _____ Email address: _____

You do not have to provide any of the above contact information. However, if you want us to mail/email you copies of data, we will need some type of contact information. In addition, if we do not understand your request and need to get clarification from you, without contact information we will not be able to begin processing your request until you contact us.

We will respond to your request as soon as reasonably possible.

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

State Project Number (S.P.):	<u>4013-54</u>	Original Amount Encumbered
Trunk Highway Number (T.H.):	<u>169= 005</u>	<u>\$2,478,097.00</u>
State Aid Number (S.A.P.):	<u>040-628-028</u>	
Lighting System Feed Point No.	<u>R40H</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 County will perform grading, bituminous paving, curb and gutter, drainage improvements and lighting construction and other associated construction upon, along and adjacent to Trunk Highway No. 169 from 900 feet north of Dopy Lane to 1050 feet north of County State Aid Highway No. 28 according to County-prepared plans, specifications and special provisions designated by the State as State Project No. 4013-54 (T.H. 169= 005)("Project"); and
2. The County requests the State participate in the costs of the grading, bituminous paving, curb and gutter, drainage improvements and lighting construction and the State is willing to participate in the costs of said construction and associated construction engineering; and
3. 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;

- 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: 2.4. State Ownership of Improvements; 5. Maintenance by the County; 9. Liability; Worker Compensation Claims; Insurance; 11. State Audits; 12. Government Data Practices; 13. Governing Law; Jurisdiction; Venue; and 15. Force Majeure.
- 1.4. **Plans, Specifications, Special Provisions.** State-approved County plans, specifications and special provisions designated by the State as State Project No. 4013-54 (T.H. 169= 005) are on file in the office of the County's Engineer and incorporated into this Agreement by reference. ("Project Plans")

2. Right-of-Way Use

- 2.1. **Limited Right to Occupy.** The State grants to the County (and its contractors and consultants) the right to occupy trunk highway right-of-way as necessary to perform the work described in the Project Plans. This right is limited to the purpose of constructing the project, and administering such construction, and may be revoked by the State at any time, with or without cause. Cause for revoking this right of occupancy

-1-

Payable Lump Sum (Municipal Agreements)

includes, but is not limited to, breaching the terms of this or any other agreement (relevant to this project) with the State, failing to provide adequate traffic control or other safety measures, failing to perform the construction properly and in a timely manner, and failing to observe applicable environmental laws or terms of applicable permits. The State will have no liability to the County (or its contractors or consultants) for revoking this right of occupancy.

- 2.2. **State Access; Suspension of Work; Remedial Measures.** The State's District Engineer or assigned representative retains the right to enter and inspect the trunk highway right-of-way (including the construction being performed on such right-of-way) at any time and without notice to the County or its contractor. If the State determines (in its sole discretion) that the construction is not being performed in a proper or timely manner, or that environmental laws (or the terms of permits) are not being complied with, or that traffic control or other necessary safety measures are not being properly implemented, then the State may direct the County (and its contractor) to take such remedial measures as the State deems necessary. The State may require the County (and its contractors and consultants) to suspend their operations until suitable remedial action plans are approved and implemented. The State will have no liability to the County (or its contractors or consultants) for exercising its rights under this provision.
- 2.3. **Traffic Control; Worker Safety.** While the County (and its contractors and consultants) are occupying the State right-of-way, they must comply with the approved traffic control plan, and with applicable provisions of the Work Zone Field Handbook (<http://www.dot.state.mn.us/trafficeng/workzone/index.html>). All County, contractor, and consultant personnel occupying the State's right-of-way must be provided with required reflective clothing and hats.
- 2.4. **State Ownership of Improvements.** The State will retain ownership of its trunk highway right-of-way, including any improvements made to such right-of-way under this Agreement, unless otherwise noted. The warranties and guarantees made by the County's contractor with respect to such improvements (if any) will flow to the State. The County will assist the State, as necessary, to enforce such warranties and guarantees, and to obtain recovery from the County's consultants, and contractor (including its sureties) for non-performance of contract work, for design errors and omissions, and for defects in materials and workmanship. Upon request of the State, the County will undertake such actions as are reasonably necessary to transfer or assign contract rights to the State and to permit subrogation by the State with respect to claims against the County's consultants and contractors.

3. Contract Award and Construction

- 3.1. **Bids and Award.** The County will receive bids and award a construction contract to the lowest responsible bidder (or best value proposer), subject to concurrence by the State in that award, according to the Project Plans. The contract construction will be performed according to the Project Plans.
- 3.2. **Bid Documents furnished by the County.** The County will, within 7 days of opening bids for the construction contract, submit to the State's District Engineer a copy of the low bid and an abstract of all bids together with the County's request for concurrence by the State in the award of the construction contract. The County will not award the construction contract until the State advises the County in writing of its concurrence.
- 3.3. **Rejection of Bids.** The County may reject and the State may require the County to reject any or all bids for the construction contract. The party rejecting or requiring the rejection of bids must provide the other party written notice of that rejection or requirement for rejection no later than 30 days after opening bids. Upon the rejection of all bids, a party may request, in writing, that the bidding process be repeated. Upon the other party's written approval of such request, the County will repeat the bidding process in a reasonable period of time, without cost or expense to the State.

3.4. Contract Terms. The County's contract with its construction contractor(s) must include the following terms:

- A. A clause making the State of Minnesota, acting through its Commissioner of Transportation, an intended third-party beneficiary of the contract with respect to the portion of work performed on the State's right-of-way; and
- B. A clause requiring the State to be named as an additional insured on any insurance coverage which the contractor is required to provide; and
- C. A clause stating that any warranties provided by the contractor, for the work performed on the trunk highway, will flow to, and be enforceable by, the State as the owner of such improvements.

3.5. Direction, Supervision and Inspection of Construction

- A. The contract construction will be under the direction of the County and under the supervision of a registered professional engineer; however, the State participation construction covered under this Agreement will be open to inspection by the State District Engineer's authorized representatives. The County will give the District Engineer at Mankato five days notice of its intention to start the contract construction.
- B. Responsibility for the control of materials for the contract construction will be on the County and its contractor and will be carried out according to Specifications No. 1601 through and including No. 1609 in the State's current "Standard Specifications for Construction".

3.6. Contaminated Soils and Groundwater within the State's Cost Participation Limits.

- A. **24 Hour Notification.** The County will notify the State District Engineer's authorized representative a minimum of 24 hours prior to the contractor beginning the excavation and removal of any contaminated soils that have been identified within the Project limits.
- B. **Immediate Notification.** The County will notify the State District Engineer's authorized representative immediately upon the contractor encountering contaminated soils and/or groundwater in areas that are within the Project limits. The County will confer with the State as to the handling, disposal, and any other issues related to contaminated materials found on State Right-of-Way or import of materials onto State Right-of-Way.
- C. **Environmental Consultant.** The County will provide for an Environmental Consultant to be on site to observe and document the excavation, handling and disposal of contaminated soils that have been identified within the Project limits. If the contractor encounters contaminated materials in areas not previously identified and upon notification by the County to MnDOT, the County hired Environmental Consultant will be provided to collect and analyze soil and/or groundwater samples to determine contaminant levels, work with the landfill for disposal of the soil waste, and provide oversight of any soil and groundwater handling and disposal. The County will not allow the contractor to excavate any contaminated soil unless the Environmental Consultant is present.

3.7. Completion of Construction. The County will cause the contract construction to be started and completed according to the time schedule in the construction contract special provisions. The completion date for the contract construction may be extended, by an exchange of letters between the appropriate County official and the State District Engineer's authorized representative, for unavoidable delays encountered in the performance of the contract construction.**3.8. Plan Changes.** All changes in the Project Plans and all addenda, change orders and supplemental agreements entered into by the County and its contractor for contract construction must be approved in writing by the State District Engineer's authorized representative.

3.9. *Compliance with Laws, Ordinances, Regulations.* The County will comply and cause its contractor to comply with all Federal, State and Local laws, and all applicable ordinances and regulations. With respect only to that portion of work performed on the State's trunk highway right-of-way, the County will not require the contractor to follow local ordinances or to obtain local permits.

3.10. *Construction Documents Furnished by the County.* The County will keep records and accounts that enable it to provide the State, when requested, with the following:

- A. Copies of the County contractor's invoice(s) covering all contract construction.
- B. Copies of the endorsed and canceled County warrant(s) or check(s) paying for final contract construction, or computer documentation of the warrant(s) issued, certified by an appropriate County official that final construction contract payment has been made.
- C. Copies of all construction contract change orders and supplemental agreements.
- D. A certification form, provided by the State, signed by the County's Engineer in charge of the contract construction attesting to the following:
 - i. Satisfactory performance and completion of all contract construction according to the Project Plans.
 - ii. Acceptance and approval of all materials furnished for the contract construction relative to compliance of those materials to the State's current "Standard Specifications for Construction".
 - iii. Full payment by the County to its contractor for all contract construction.
- E. Copies, certified by the County's Engineer, of material sampling reports and of material testing results for the materials furnished for the contract construction.
- F. A copy of the "as built" plan sent to the District Engineer.

4. Right-of-Way; Easements; Permits

- 4.1.** The County will, without cost or expense to the State, obtain all rights-of-way, easements, construction permits and any other permits and sanctions that may be required in connection with the local and trunk highway portions of the contract construction. Before payment by the State, the County will furnish the State with certified copies of the documents for rights-of-way and easements, construction permits and other permits and sanctions required for State participation construction covered under this Agreement.
- 4.2.** The County will convey to the State by quit claim deed, all newly acquired rights needed for the continuing operation and maintenance of the Trunk Highway, if any, upon completion of the Project, at no cost or expense to the State.
- 4.3.** The County will comply with Minnesota Statutes § 216D.04, subdivision 1(a), for identification, notification, design meetings and depiction of utilities affected by the contract construction.

5. Maintenance by the County

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

- 5.1. *Roadways.*** Maintenance of Pumpkin Hill Road and Industrial Park Street. Maintenance includes, but is not limited to, snow, ice and debris removal, resurfacing and seal coating and any other maintenance activities according to accepted County maintenance practices.
- 5.2. *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 structures, grates and pipes; repair of minor erosion problems; minor structure repair; and any other maintenance activities necessary to preserve the facilities and to prevent conditions such as flooding, erosion, sedimentation or accelerated deterioration of the facilities.

5.3. *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 County 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.

5.4. *Additional Drainage.* Neither 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. The drainage areas served by the storm sewer facilities constructed under the construction contract are shown in a drainage area map, EXHIBIT "Drainage Area", which is on file in the office of the State's District Hydraulics at Mankato and is incorporated into this Agreement by reference.

6. State Cost and Payment by the State

6.1. *State Cost.* \$2,478,097.00 is the State's full and complete lump sum cost for grading, bituminous paving, curb and gutter, drainage improvements and lighting construction and associated construction engineering.

6.2. *Conditions of Payment.* The State will pay the County the full and complete lump sum amount or the total cost of the contract construction as shown in the awarded contract bid document plus an 8 percent construction engineering cost share, whichever amount is smaller, after the following conditions have been met:

- A. Encumbrance by the State of the State's full and complete State funded lump sum cost share.
- B. Approval by the State's Land Management Director at St. Paul of certified documentation, submitted by the County, for all right-of-way and easement acquisitions required for the contract construction.
- C. Execution of this Agreement and transmittal to the County, including a letter advising of the State's concurrence in the award of the construction contract.
- D. The State's receipt of a written request from the County for the advancement of funds. The request will include certification by the County that all necessary parties have executed the construction contract.

6.3. *Limitations of State Payment; No State Payment to Contractor*

The State's participation in the contract construction is limited to the lump sum amount shown in Article 6.1, and the State's participation will not change except by a mutually agreed written amendment to this Agreement. The State's payment obligation extends only to the County. The County's contractor is not intended to be and will not be deemed to be a third party beneficiary of this Agreement. The County's contractor will have no right to receive payment from the State. The State will have no responsibility for claims asserted against the County by the County's contractor.

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: Maryanne Kelly-Sonnek, Municipal Agreements Engineer (or successor)
 Address: 395 John Ireland Boulevard, Mailstop 682, St. Paul, MN 55155
 Telephone: (651) 366-4634
 E-Mail: maryanne.kellysonnek@state.mn.us

7.2. The County's Authorized Representative will be:

Name/Title: Darrell Pettis (or successor)
 Address: 88 South Park Avenue, Le 7 Center, MN 56057
 Telephone: 507-357-2251
 E-Mail: dpettis@co.le-sueur,mn.us

8. Assignment; Amendments; Waiver; Contract Complete

- 8.1. 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.
- 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 County. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

9. Liability; Worker Compensation Claims; Insurance

- 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 County. Notwithstanding the foregoing, the County will indemnify, hold harmless, and defend (to the extent permitted by the Minnesota Attorney General) the State against any claims, causes of actions, damages, costs (including reasonable attorneys fees), and expenses arising in connection with the project covered by this Agreement, regardless of whether such claims are asserted by the County's contractor(s) or consultant(s) or by a third party because of an act or omission by the County or its contractor(s) or consultant(s).
- 9.2.** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.
- 9.3.** The County may require its contractor to carry insurance to cover claims for damages asserted against the County's contractor.

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.

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Payable Lump Sum (Municipal Agreements)

11. 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.

12. 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.

13. 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.

14. Termination; Suspension

14.1. *By Mutual Agreement.* This Agreement may be terminated by mutual agreement of the parties or by the State for insufficient funding as described below.

14.2. *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 payment of the services covered here. Termination must be by written or fax notice to the County. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the County will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if this Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds.

14.3. *Suspension.* In the event of a total or partial government shutdown, the State may suspend this Agreement and all work, activities, performance and payments authorized through this Agreement. Any work performed during a period of suspension will be considered unauthorized work and will be undertaken at the risk of non-payment.

15. 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.

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STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Minnesota Statutes § 16A.15 and 16C.05.

Signed: _____

Date: _____

SWIFT Purchase Order: 3000237703

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 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.

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Payable Lump Sum (Municipal Agreements)