



Le Sueur County, MN

Tuesday, July 7, 2015

Board Meeting

Item 5

9:35 am Darrell Pettis, County Administrator

RE: Court of Appeals

RE: Rural Intersection Lighting Agreement

RE: Xcel Agreement

RE: Credit Card Application

RE: Discussion on possible Septic Contractor Workshop

RE: Discussion on possible German - Jefferson Sewer District Workshop

RE: Road Project Update

RE: Unimim Annual Report

RE: Budget Committee Workshops: Monday Aug 10 and Tuesday Aug 11

Staff Contact:

Le Sueur County Board of Commissioners
88 South Park Avenue
Le Center MN 56057

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2014).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A14-0792**

Michael Klockmann, et al.,
Relators,

vs.

Le Sueur County Board of Commissioners, et al.,
Respondent.

**Filed June 22, 2015
Affirmed
Hudson, Judge**

Le Sueur County Board of Commissioners

Gary G. Fuchs, Elizabeth E. Rein, Hammargren & Meyer, P.A., Bloomington, Minnesota
(for relators)

Kenneth H. Bayliss, Quinlivan & Hughes, P.A., St. Cloud, Minnesota (for respondent Le
Sueur County Board of Commissioners)

Timothy M. Kelley, Stinson Leonard Street, LLP, Minneapolis, Minnesota (for
respondent Minnesota Municipal Power Agency)

Considered and decided by Hudson, Presiding Judge; Worke, Judge; and Smith,
Judge.

UNPUBLISHED OPINION

HUDSON, Judge

In this certiorari appeal from respondent-county's grant of a conditional use permit (CUP) for a silage-storage facility, relators, opposing landowners, argue that (a) the proposed use does not fall within the categories of conditional uses allowed by ordinance; (b) the county lacked authority to rescind its prior denial of the CUP and grant it on reconsideration; and (c) the grant of the CUP is not supported by the record evidence. We affirm.

FACTS

In June 2013, respondent Minnesota Municipal Power Agency (MMPA) filed an application for a CUP to construct a corn-silage storage facility in Sharon Township, Le Sueur County. The facility, which was intended to meet renewable-energy mandates, would contain storage bunkers holding numerous tons of silage for transport to a bioenergy facility located four miles away, in the City of Le Sueur. The bioenergy facility would then use an anaerobic digestion process to convert the agricultural processing waste into biogas for use in producing renewable electricity and pipeline-quality gas.

The storage-facility site was located in an agricultural zoning district. Relators Michael and Kimberly Klockmann own the residence closest to the site, about 1,000 feet to the north. The facility was designed to include 16 concrete, 175-foot-by-100-foot bunkers. Temporary covers would cover the bunkers after the silage was compacted; leakage and stormwater would be diverted to underground storage tanks. During peak

corn-pack season, two or three trucks per hour would operate on an 18-hour schedule; during the off-season, one to two trucks per hour would operate on an 8-12 hour schedule.

The storage-facility site had been moved from its initial proposed location in the City of Le Sueur because of a zoning issue near the airport. After the CUP application for the new site was submitted, the Le Sueur County Planning Commission delayed processing the application while the Minnesota Pollution Control Agency (MPCA) determined whether a new environmental assessment worksheet would be required; the MPCA later determined that a new environmental assessment worksheet was not required.

At a planning-commission meeting, neighboring landowners articulated several concerns, including possible flooding potential; health and odor problems caused by vermin; and noise and traffic-safety problems resulting from a high volume of truck traffic. An engineer representing MMPA testified that the site's topography was flat and far from surface waters, with no wetlands present and a clay layer of soil. He testified that the site design would capture the majority of stormwater runoff and that odor and vermin problems would be limited because many of the bunkers would be covered at one time. The planning commission recommended denial of the CUP, and respondent Le Sueur County Board of Commissioners (the county board) denied the CUP on a 5-0 vote in September 2013.

A month later, the landowners on whose property the facility would be located and MMPA as intervenor filed suit in district court. They sought a writ of mandamus

compelling the county board to grant the CUP and a judgment declaring that (1) the CUP had not been formally approved or denied within the required 60-day time limit of Minn. Stat. § 15.99 (2012) and (2) the proposed use required only a zoning permit, not a conditional-use permit. In November 2013, they also filed a certiorari appeal to this court, challenging the denial of the CUP as arbitrary and capricious or affected by legal error.

In April 2014, the county board reconsidered its denial of the CUP. MMPA had prepared screening, lighting, and drainage plans to address previous concerns. MMPA also agreed to install a 100-foot paved entrance, a well, and toilet facilities on the property, as well as to provide the county with copies of annual site reporting to the MPCA. An MMPA engineer indicated at a county board meeting that the facility's storage ponds are substantially higher than the county's drain tile system, so that overflow would occur into the county ditch only in an extraordinary event. He stated that noncontact stormwater would be allowed to percolate into the ground, but water that had been in contact with silage would be collected and brought to a leachate tank, which would be pumped out.

A number of landowners signed a petition requesting the county board to address, among other questions, "what use listed in the agricultural district allows silage and stockpiling in an agricultural district. . . . [I]f silage stockpiling is not listed as a permitted or conditional use, it is prohibited." At a public hearing, the county's attorney noted the pending court proceedings, and a landowner questioned whether those proceedings required reconsideration of the CUP. The attorney replied that the court actions were

unresolved and that if they were determined adversely to the county, the facility might be approved without conditions. The attorney also stated that governmental bodies had processes for reconsideration, that Robert's Rules of Order allowed a procedural motion to rescind the CUP, and that MMPA had indicated that it would seek dismissal of the lawsuits if the CUP were approved.

The neighboring landowners asserted the existence of a number of issues with the proposed facility. These included: (1) traffic safety with a high volume of trucking; (2) odor control; (3) adequate drainage for contact water in a former marsh area; (4) vermin control; (5) stormwater drainage; (6) declining values of nearby property; (7) lighting and noise issues; and (8) unfairness in locating the storage facility in the township when the bioenergy facility would instead serve the City of Le Sueur. Respondents' representatives indicated that odors would be minimized by covering the silage with high-density plastic material, the facility would abide by the local nuisance ordinance, and stormwater would be retained on site and percolate.

The county board voted 3-2 to approve the CUP with specific conditions, including monitoring the approved state disposal permit, constructing screening, complying with standards to minimize spillage, respecting highway weight limits and erecting safety signs on roads, implementing a drainage-and-lighting plan, providing a well and toilet facilities, and complying with the local nuisance ordinance. The district court case was dismissed with prejudice in May 2014, and by stipulation, this court dismissed the pending appeal of the county's previous decision denying the CUP. This

certiorari appeal follows. This court granted MMPA's stipulated motion to intervene in the appeal.

DECISION

A county board may approve a CUP if the applicant shows that all the standards and criteria in the county ordinance will be met. Minn. Stat. § 394.301, subd. 1 (2014). A county board's decision regarding a CUP is quasi-judicial and reviewable by writ of certiorari. *Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 574 n.5 (Minn. 2000); *Picha v. Cnty. of McLeod*, 634 N.W.2d 739, 741 (Minn. App. 2001). We independently review a county board's decision to grant a CUP to determine if it is unreasonable, arbitrary, or capricious. *Schwardt v. Cnty. of Watonwan*, 656 N.W.2d 383, 386 (Minn. 2003). First, we consider whether the reasons given by the governmental body are legally sufficient to allow the grant of the CUP. *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 75–76 (Minn. 2015). If the reasons given are legally sufficient, we examine whether they had a factual basis in the record. *Id.* at 76. This court “ha[s] traditionally held CUP approvals to a more deferential standard of review than CUP denials.” *Schwardt*, 656 N.W.2d at 389 n.4. The interpretation of an existing ordinance presents a legal question, which this court reviews de novo. *RDNT*, 861 N.W.2d at 75.

I

Relators argue that the county board lacked authority to grant a CUP for construction of the silage-storage facility because that use is prohibited in an agricultural zoning district. Respondents argue that relators waived this argument by failing to raise it before the county board. The Minnesota Supreme Court has held that “[t]o allow parties to litigate an issue [of granting a CUP] on certiorari review that was not raised before the local zoning authority would encroach on the county’s broad authority in making quasi-judicial decisions.” *Big Lake Ass’n v. St. Louis Cnty. Planning Comm’n*, 761 N.W.2d 487, 491 (Minn. 2009). An appellate court

review[s] the record to determine whether the issue was fairly raised for consideration by the zoning authority. The issue does not need to be framed in precise legal terms, but there must be sufficient specificity to provide fair notice of the nature of the challenge so that the zoning authority has an opportunity to consider and address the issue.

Id. “[G]eneralized complaints regarding the density of the proposal, which are often raised by local property owners,” are not sufficient to raise a legal-classification issue.

Id. at 492.

Here, the record shows that the landowners’ petition to the county board raised the legal issue of whether silage stockpiling was listed as a permitted or conditional use in the Le Sueur County Zoning Ordinance. This argument is more than a “generalized complaint[,]” and it supplied “fair notice of the nature of the challenge,” so that the classification argument was not waived. *See id.*

Relators argue that the silage-storage facility does not fall within the listed categories permitted as conditional uses in an agricultural district under the zoning ordinance. We review de novo the county's interpretation of its ordinance, applying the same rules that govern statutory interpretation. *Eagle Lake of Becker Cnty. Lake Ass'n v. Becker Cnty. Bd. of Comm'rs*, 738 N.W.2d 788, 792 (Minn. App. 2007). “[W]hen construing an ordinance, we first determine whether the language is reasonably subject to more than one interpretation.” *Cannon v. Minneapolis Police Dep't*, 783 N.W.2d 182, 193 (Minn. App. 2010). “If the language is unambiguous, we must give effect to the unambiguous text because the letter of the law shall not be disregarded under the pretext of pursuing the spirit.” *Id.* (quotation omitted). Sections of an ordinance must be read together to determine their plain meaning. *Stotts v. Wright Cnty.*, 478 N.W.2d 802, 805 (Minn. App. 1991), *review denied* (Minn. Feb. 11, 1992). If the language is ambiguous, we use canons of statutory interpretation to discern legislative intent. *500, LLC v. City of Minneapolis*, 837 N.W.2d 287, 290 (Minn. 2013).

Relators maintain that the ordinance's failure to specify a silage-storage structure as a conditional use in an agricultural zoning district shows an intent to prohibit such a facility in that district. *See* Le Sueur County, Minn. Zoning Ordinance, § 5, subd. 5 (2013) (stating that “[w]hensoever in any Zoning District a use is neither specifically permitted or [a] conditional use, the use shall be considered prohibited”). They argue that the proposed facility is more properly characterized as a conditional use for outdoor and open storage in a General Business District, *see id.* at § 10, subd. 3(C), or as a facility for storage of materials in a General Industrial District. *See id.* at § 11, subd. 3(A). They

argue that, therefore, the county board should have ordered a study to decide in which zoning district the facility would have been an acceptable use. *See id.* at § 5, subd. 5 (stating that if a use is unlisted, the county board may either amend the ordinance to provide for it, find that it is not compatible in that zoning district, or “conduct a study to determine if the use is acceptable and, if so, what Zoning District would be most appropriate”).

We conclude, however, that, read as a whole, the ordinance allows the proposed facility to be considered as a conditional use in an agricultural district. The ordinance lists the following as conditional uses in that district:

Water supply tanks or buildings, reservoirs, commercial wells, gas regulator stations, electric substations or transmission lines greater [tha]n 35kV, railroad right-of-way, but *not including* railroad yards, public sewage treatment facilities and other *similar* essential public utility and service structures.

Id., § 8, subd. 3(J) (emphasis added). “Essential services” are defined to include “collection, communication, supply or disposal systems and structures, used by public utilities or governmental departments or commissions. *Id.*, § 4. The silage-storage facility is a “collection [or] supply . . . structure[.]” And MMPA falls within the category of public utilities, which are defined under the ordinance as “[p]ersons, corporations, or governments, supplying gas, electric, transportation, water, sewer, or land line telephone service to the general public.” *Id.* Because the silage-storage facility is a “collection [or]

supply . . . structure[] . . . used by a public utility,” the facility qualifies as an “essential service” structure under the ordinance. *See id.* § 4; § 8, subd. 3(J).¹

By its terms, the ordinance excludes as conditional uses “essential public utility and service structures” if those structures are “similar” to “railroad yards” and “public sewage treatment facilities.” *Id.*, § 8, subd. 3(J). “Similar” has been defined as “[r]elated in appearance or nature; alike though not identical.” *American Heritage Dictionary of the English Language* 1682 (3d ed. 1992). We conclude that the proposed silage storage facility does not fall within the ordinance’s exclusions from the list of conditional uses because, although it is an “essential public utility and service structure,” it is not “similar” to the listed prohibited uses of railroad yards and public sewage treatment facilities. Le Sueur County Zoning Ordinance, § 8, subd. 3(J). This reasoning is also consistent with an additional provision in the ordinance, which expressly allows as a conditional use the similar energy-related use of commercial wind energy conversion systems. *Id.*, § 8, subd. 3(Y). Therefore, the county board had authority to grant a CUP for the construction of the silage-storage facility.

II

Relators also argue that the county board lacked authority to modify its earlier denial of the CUP. Respondents maintain that relators waived this argument as well, by

¹ We note relators’ argument involving another clause of the ordinance, which defines “essential services” to include additional items “not including structures” that are “required for protection of the public health, safety or general welfare.” *See* Le Sueur County, Minn. Zoning Ordinance, § 4. Relators maintain that because the facility is a structure, it does not fall within that definition. But because we have concluded that the facility qualifies as an essential service structure under a different definition, we need not address this argument.

failing to raise it before the county board. *See Big Lake*, 761 N.W.2d at 492. But the record reflects that, at a public hearing, landowners questioned the county's authority to reconsider a previously denied CUP, and the county's attorney had an opportunity to respond to that argument. Thus, we conclude that relators adequately raised this issue, and we decline to consider it waived. *See Big Lake*, 761 N.W.2d at 491 (requiring that the county receive "fair notice" of a challenged issue so that it could respond to legal arguments).

Relators argue that the relevant zoning ordinance precludes the county board from reconsidering its denial of a CUP within one year after its original decision. That ordinance provides, relating to CUPs:

SUBDIVISION 4. RECONSIDERATION

Whenever an application for a [CUP] has been considered and denied by the Board of County Commissioners, a similar application for a [CUP] affecting the same property shall not be considered again by the Planning Commission or Board of County Commissioners for at least one (1) year from the date of its denial.

Le Sueur County Zoning Ordinance, § 21, subd. 4.

The plain language of subdivision four prohibits reconsideration of "a similar" application for a CUP within a one-year period. *Id.* But "a similar" application is not, by definition, "the same" application. *See American Heritage Dictionary of the English Language* 1682 (stating definition of "similar"). Here, respondents did not submit a different, but similar, application within one year. They never withdrew their initial application, but simply re-argued for its approval on the merits.

Further, the county board reconsidered the application following a timely challenge to its original decision denying the CUP. This court has recognized the principle that “an administrative agency has a well-established right to reopen, rehear, and redetermine [a] matter even after a determination has been made.” *In re N. Metro Harness*, 711 N.W.2d 129, 135–36 (Minn. App. 2006) (quotation omitted), *review denied* (Minn. June 20, 2006). In *N. Metro Harness*, we held that the Minnesota Racing Commission could reconsider an application for a Class A racetrack license after receiving new relevant information, concluding that the commission had inherent authority to reconsider the application when it acted with diligence. *Id.* at 132, 136.

The principle of an agency’s inherent authority to reconsider its prior decision is particularly applicable here, where the county board reconsidered its decision following a timely petition for certiorari review of the initial CUP denial. The county board was not precluded from reconsidering its decision on the CUP when an appeal from that decision was pending. *See id.* at 136–37; *cf. Little v. Arrowhead Regional Corrections*, 773 N.W.2d 344, 346 (Minn. App. 2009) (noting that a pending postdecision motion provides an appropriate basis for deferring appellate review so that the original decision-maker may address the motion). Under these circumstances, we conclude that the ordinance’s time limitations for reconsideration do not apply, and the county board was not precluded from reconsidering its initial denial of respondents’ application for a CUP within a one-year period.

III

Relators argue that, even if the county board had authority to reconsider its denial of the CUP, its action in granting the CUP was unsupported by the facts on record. We examine whether the county board “acted unreasonably, arbitrarily, or capriciously” in its decision regarding the CUP. *Schwardt*, 656 N.W.2d at 386. Our “function is not to weigh the evidence, but to review the record to determine whether there was legal evidence to support the zoning authority’s decision.” *RDNT*, 861 N.W.2d at 76 (quotation omitted). On conflicting evidence, this court generally defers to the judgment of the zoning authority. *Id.*

The county board granted the CUP on reconsideration with designated conditions that included: monitoring the approved state disposal permit, constructing screening, minimizing spillage, respecting highway weight limits and erecting safety signs, maintaining standards under a drainage-and-lighting plan, providing a well and toilet facilities, and complying with the local nuisance ordinance. Relators argue that, even with these conditions, the CUP did not address additional concerns of road safety, odor, groundwater contamination, lighting, and wildlife control. A county board may consider neighborhood opposition to granting a CUP only if it rests on concrete information. *Bartheld v. Cnty. of Koochiching*, 716 N.W.2d 406, 413 (Minn. App. 2006). Relators maintain that their concerns relate to the ordinance Land Use Performance Standards, including those addressing water pollution, odors, access drives, and screening. *See generally* Le Sueur County Zoning Ordinance, § 19, subd. 3. But the CUP required compliance with a number of these standards, including specific compliance with the

MPCA disposal permit and engineering standards recommended by the Minnesota Department of Transportation. And the lighting plan provided for directional lighting to alleviate lighting concerns for adjacent properties. Under these circumstances, the plan's failure to provide additional, site-specific solutions for the landowners' additional concerns does not render the decision to approve the CUP unreasonable, arbitrary, or capricious, and legal evidence sufficiently supports the county board's approval of the CUP.

Affirmed.

Dated:

June 11, 2015



Judge Natalie E. Hudson



Minnesota Department of Transportation
State Aid for Local Transportation

395 John Ireland Boulevard, MS 500
Saint Paul, MN 55155

June 24, 2015

Darrell Pettis
LeSueur County Engineer
88 South Park Avenue
Le Center,, MN 56057

SUBJECT: SP 040-070-004, HSIP 4015(116)
Rural intersection lighting
Agency Agreement No. 1000838

Dear Mr. Pettis:

Your project is now authorized you may now begin work and be reimbursed for it. Attached are three copies of the agency agreement between the Le Sueur County and MnDOT, which allows for MnDOT to act as the County's agent in accepting federal aid in connection with the above referenced project.

Please review and if approved, have all three copies signed. A Board resolution similar to the example attached, must be passed. The certified resolution should then be placed as the last page in each of the three copies of the agreement. Please verify that the person/title authorized to sign as stated in the resolution, corresponds to the signature (person/title) on the signature page. Please return all three copies of the agreement to me for MnDOT signatures. A fully executed copy will be returned to you. If you have any questions or need any revisions, please feel free to contact me at 651.366.3822.

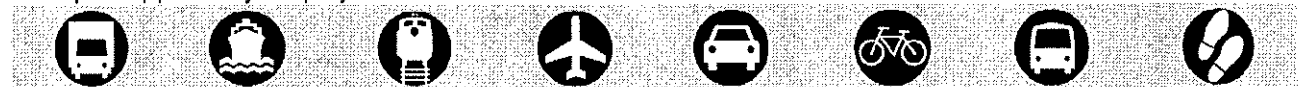
Sincerely,


Lynnette Roshell, PE
Project Development Engineer

Enclosures

cc: Gordon Regenscheid--DSAE
File

An Equal Opportunity Employer



SAMPLE RESOLUTION FOR AGENCY AGREEMENT

BE IT RESOLVED, that pursuant to Minnesota Stat. Sec. 161.36, the Commissioner of Transportation be appointed as Agent of the Le Sueur County to accept as its agent, federal aid funds which may be made available for eligible transportation related projects.

BE IT FURTHER RESOLVED, the * (*Chairman*) and the * (*Auditor*) are hereby authorized and directed for and on behalf of the County to execute and enter into an agreement with the Commissioner of Transportation prescribing the terms and conditions of said federal aid participation as set forth and contained in “Minnesota Department of Transportation Agency Agreement No. 1000838“, a copy of which said agreement was before the County Board and which is made a part hereof by reference.

Titles of persons authorized to sign on behalf of the County

SAMPLE CERTIFICATION

STATE OF MINNESOTA
COUNTY OF _____

I hereby certify that the foregoing Resolution is a true and correct copy of the Resolution presented to and adopted by the Le Sueur County at a duly authorized meeting thereof held on the ____ day of _____, 20____, as shown by the minutes of said meeting in my possession.

Auditor

Notary Public
My Commission expires _____

(SEAL)

STATE OF MINNESOTA AGENCY AGREEMENT
BETWEEN
DEPARTMENT OF TRANSPORTATION
AND
LE SUEUR COUNTY

FOR FEDERAL PARTICIPATION IN FORCE ACCOUNT
FOR
S.P. 040-070-004; M.P. HSIP 4015(116)

This agreement is entered into by and between LE SUEUR COUNTY ("County") and the State of Minnesota acting through its Commissioner of Transportation ("MnDOT"),

Pursuant to Minnesota Statutes Section 161.36, the County desires MnDOT to act as the County's agent to accept and disburse federal funds for the construction, improvement, or enhancement of transportation financed in whole or in part by federal funds, hereinafter referred to as the "Project"; and

The County is proposing a federal aid project to light various rural highway intersections. A public interest finding has determined that the installation of the lighting systems can be completed more economically as a Force Account hereinafter referred to as the "FORCE ACCOUNT" with the work being done by a series of Electrical Cooperatives and Companies; and

The FORCE ACCOUNT is eligible for the expenditure of federal aid funds, and is identified in MnDOT records as State Project 040-070-004, and in Federal Highway Administration ("FHWA") records as Minnesota Project HSIP 4015(116); and

The CFDA number for this project is 20.205; and

MnDOT requires that the terms and conditions of this agency be set forth in an agreement.

THE PARTIES AGREE AS FOLLOWS:

I. DUTIES OF THE COUNTY.

A. DESIGNATION. The County designates MnDOT to act as its agent to accept and disburse federal funds made available for the Project.

B. ELIGIBILITY / COSTS. The estimated cost of the FORCE ACCOUNT is \$178,279.

1. It is anticipated that 90% (up to \$ 178,278.30) of the cost of the FORCE ACCOUNT is to be paid from federal funds made available by the FHWA, and that the remaining 10% will be paid by the County. The County will pay any part of the cost or expense of the work that the FHWA does not pay.
2. Any costs incurred by the County prior to authorization, will not be eligible for federal participation.

Agreement no. 1000838

3. Eligible cost and expense, if approved, may consist of the following:
 - a) The cost of furnishing and installing electrical equipment to light rural intersections noted on the construction plan,
 - b) The direct labor charges for County employees for the time that said employees are engaged in the work to be performed by the County pursuant to this agreement. Said labor charges may include the prorata share of "labor additives" applicable to said labor charges. Costs to the County of "labor additives" consisting of holiday pay, vacation, sick leave, retirement, pension, unemployment taxes, compensation and liability insurance, lost time charges and similar costs incidental to labor employment will be reimbursed only when supported by adequate records.
 - c) The applicable equipment rental charges for County owned equipment used by the County and mileage charges for employee owned vehicles used by the County on the work to be performed pursuant to this agreement, at rates reflective of the County actual cost.
 - d) Expenditures for materials, supplies, mechanical data processing and equipment rental, limited to the actual expenditures for the purposes of this agreement.
4. Expenditures for general administration, supervision, maintenance and other overhead or incidental expenses of the County are not eligible for federal participation.
5. Acceptability of costs under this agreement will be determined in accordance with the cost principles and procedures set forth in the applicable Federal Acquisition Regulations, Contract Cost Principles and Procedures, 48 Code of Federal Regulations (CFR) 31 which is hereby incorporated by reference and made a part of this agreement.
6. For costs expected to exceed \$178,279, the County must request the preparation and execution of a supplement to this agreement, prior to incurring such costs.

C. STAFFING.

1. The County will designate a publicly employed registered engineer, ("Project Engineer"), to be in responsible charge of the Project and to supervise and direct the work to be performed under any construction contract let for the Project. If County elects to use a private consultant for engineering services, the County will provide a qualified, full-time public employee of the County, to be in responsible charge of the Project. The services of the County to be performed pursuant to this agreement may not be assigned, sublet, or transferred unless the County is notified in writing by MnDOT that such action is permitted under 23 CFR 1.33 and 23 CFR 635.105 and state law. This written consent will in no way relieve the County from its primary responsibility for performance of the work.
2. During the progress of the work on the Project, the County authorizes its Project Engineer to request in writing specific engineering and/or technical services from MnDOT, pursuant to Minnesota Statutes Section 161.39. Such services may be

Agreement no. 1000838

covered by other technical service agreements. If MnDOT furnishes the services requested, and if MnDOT requests reimbursement, then the County will promptly pay MnDOT to reimburse the state trunk highway fund for the full cost and expense of furnishing such services. The costs and expenses will include the current MnDOT labor additives and overhead rates, subject to adjustment based on actual direct costs that have been verified by audit. Provision of such services will not be deemed to make MnDOT a principal or co-principal with respect to the Project.

3. The County will furnish the personnel, services, supplies, and equipment necessary to properly supervise, inspect, and document the work for the Project.

D. CONTRACT ADMINISTRATION.

1. The County will request approval from MnDOT for all costs in excess of the amount of federal funds previously approved for the Project prior to incurring such costs. Failure to obtain such approval may result in such costs being disallowed for reimbursement.
2. The County will prepare reports, keep records, and perform work so as to enable MnDOT to collect the federal aid sought by the County. The County will retain all records and reports in accordance with MnDOT's record retention schedule for federal aid projects.
3. Upon completion of the Project, the Project Engineer will determine whether the work will be accepted.

E. PAYMENTS.

1. The entire cost of the Project is to be paid from federal funds made available by the FHWA, including eligible costs incurred as of the federal authorization date of June 3, 2015 and prior to the effective date of this Agreement, and by other funds provided by the County. The County will pay any part of the cost or expense of the Project that is not paid by federal funds.
2. The County may request partial payments not more than once each thirty (30) days. The Project Engineer will certify each partial estimate.
3. The invoice and supplements thereto, will contain all details that may be necessary for a proper audit. Such details will consist of at least the following:
 - (a) A breakdown of labor by individual, classification, dates and hours worked times the applicable rate to arrive at a total dollar amount for each individual.
 - (b) The labor additive may be applied to total labor dollars, not including overtime labor dollars.
 - (c) The equipment charges must be broken down by type of equipment times the applicable rate and dates used to arrive at total equipment charges.

Agreement no. 1000838

- (d) A detailed breakdown of outside services used and supporting invoices. Documentation that costs of outside services have been paid.
 - (e) Detail for materials, supplies, and other items with the description, units, and unit prices included in the invoice. If materials or supplies are purchased from an outside source, a copy of that invoice must be included.
 - (f) The invoices will include 100% of eligible charges applicable to the Force Account so that the prorata share of federal and County participation can be applied to the total costs.
4. Following certification, by the Project Engineer, of the final estimate, the County may request reimbursement for costs eligible for federal funds. The County's request will be made to MnDOT and will include a copy of the certified final estimate along with the required records.
 5. Reimbursement of costs under this agreement will be based on actual costs, but limited to eligible items.

F. LIMITATIONS.

1. The County will comply with all applicable Federal, State, and local laws, ordinances, and regulations.
2. Nondiscrimination. It is the policy of the Federal Highway Administration and the State of Minnesota that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance (42 U.S.C. 2000d). Through expansion of the mandate for nondiscrimination in Title VI and through parallel legislation, the proscribed bases of discrimination include race, color, sex, national origin, age, and disability. In addition, the Title VI program has been extended to cover all programs, activities and services of an entity receiving Federal financial assistance, whether such programs and activities are Federally assisted or not. Even in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies, is expected to take affirmative action to assure that no person is excluded from participation in, or is denied the benefits of, the program or activity on the grounds of race, color, national origin, sex, age, or disability. It is the responsibility of the County to carry out the above requirements.
3. Workers' Compensation. Any and all employees of the County or other persons while engaged in the performance of any work or services required or permitted by the County under this agreement will not be considered employees of MnDOT, and any and all claims that may arise under the Workers' Compensation Act of Minnesota on behalf of said employees, or other persons while so engaged, will in no way be the obligation or responsibility of MnDOT. The County will require proof of Workers' Compensation Insurance from any contractor and sub-contractor.

G. AUDIT.

Agreement no. 1000838

1. The County will comply with the Single Audit Act of 1984 and Office of Management and Budget (OMB) circular A-133 including amendments and successors thereto, which are incorporated herein by reference.
 2. As provided under Minnesota Statutes Section 16C.05, subdivision 5, all books, records, documents, and accounting procedures and practices of the County are subject to examination by the United States Government, MnDOT, and either the Legislative Auditor or the State Auditor as appropriate, for a minimum of six years. The County will be responsible for any costs associated with the performance of the audit.
- H. MAINTENANCE. The County assumes full responsibility for the operation and maintenance of any facility constructed or improved under this Agreement.
- I. CLAIMS. The County will pay any and all lawful claims arising out of or incidental to the performance of the Project work. The County acknowledges that MnDOT is acting only as the County's agent for receipt and disbursement of federal funds, and not as a principal or co-principal with respect to the Project. In all events, the County will indemnify MnDOT and hold MnDOT harmless from any claims arising out of the Project.
- II. DUTIES OF MnDOT.
- A. ACCEPTANCE. MnDOT accepts designation as Agent of the County for the receipt and disbursement of federal funds and will act in accordance herewith.
- B. PROJECT ACTIVITIES. MnDOT will make the necessary requests to the FHWA for authorization to use federal funds for the Project, and for reimbursement of eligible costs pursuant to the terms of this agreement.
- C. PAYMENTS.
1. MnDOT will receive the federal funds to be paid by the FHWA for the Project, pursuant to Minnesota Statutes § 161.36, Subdivision 2.
 2. MnDOT will review and certify each partial pay request. Following certification of the partial estimate, MnDOT will reimburse the County, from said federal funds made available to the Project, for each partial payment request, subject to the availability and limits of those funds.
 3. Upon completion of the Project, the County will prepare a final payment request in accordance with the terms of this agreement. MnDOT will review and certify the final payment request with a final audit.
 4. No more than 90% of the reimbursement due under this agreement will be paid until completion of the final audit and approval by MnDOT's authorized representative.
 5. In the event MnDOT does not obtain funding from the FHWA or other funding source, or funding cannot be continued at a sufficient level to allow for the processing of the federal aid reimbursement requests, the County may continue

Agreement no. 1000838

the work with local funds only, until such time as MnDOT is able to process the federal aid reimbursement requests.

- D. **AUTHORITY.** MnDOT may withhold federal funds, where MnDOT or the FHWA determines that the Project was not completed in compliance with federal requirements.
 - E. **INSPECTION.** MnDOT, the FHWA, or duly authorized representatives of the state and federal government will have the right to audit, evaluate and monitor the work performed under this agreement. The County will make available all books, records, and documents pertaining to the work hereunder, for a minimum of seven years following the closing of the construction contract.
- III. **AUTHORIZED REPRESENTATIVES.** Each authorized representative will have responsibility to administer this agreement and to ensure that all payments due to the other party are paid pursuant to the terms of this agreement.
- A. The County authorized representative is Darrell Pettis, LeSueur County Engineer, 88 South Park Avenue, Le Center,, MN 56057, phone 507-357-2251, or his successor.
 - B. MnDOT's authorized representative is Lynnette Roshell, Minnesota Department of Transportation, State Aid for Local Transportation, 395 John Ireland Boulevard, Mail Stop 500, St Paul, MN 55155, phone 651.366.3822, or her successor.
- IV. **TORT LIABILITY.** Each party is responsible for its own acts and omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of any others and the results thereof. The Minnesota Tort Claims Act, Minnesota Statutes Section 3.736, governs MnDOT liability.
- V. **ASSIGNMENT.** Neither party will assign or transfer any rights or obligations under this agreement without prior written approval of the other party.
- VI. **AMENDMENTS.** Any amendments/supplements to this Agreement must be in writing and be executed by the same parties who executed the original agreement, or their successors in office.
- VII. **TERM OF AGREEMENT.** This agreement will be effective upon execution by the County and by appropriate State officials, pursuant to Minnesota Statutes Section 16C.05, and will remain in effect for five (5) years from the effective date or until all obligations set forth in this agreement have been satisfactorily fulfilled, whichever occurs first.
- VIII. **TERMINATION.** This agreement may be terminated by the County or MnDOT at any time, with or without cause, upon ninety (90) days written notice to the other party. Such termination will not remove any unfulfilled financial obligations of the County as set forth in this Agreement. In the event of such a termination the County will be entitled to reimbursement for MnDOT-approved federally eligible expenses incurred for work satisfactorily performed on the Project to the date of termination subject to the terms of this agreement.

Agreement no. 1000838

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intend to be bound thereby.

COUNTY

County certifies that the appropriate person(s) have executed the contract on its behalf as required by applicable resolutions, ordinances, or charter provisions

By: _____

Date: _____

Title: _____

By: _____

Date: _____

Title: _____

DEPARTMENT OF TRANSPORTATION

By: _____

Title: Director State Aid for Local Transportation

Date: _____

COMMISSIONER OF ADMINISTRATION

By: _____

Date: _____

Agreement no. 1000838

June 25th, 2015

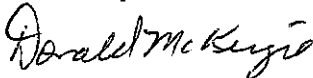
Le Sueur County Highway Department
88 South Park Ave
Le Center, MN 5657

Enclosed you will find a set of duplicate agreements, please review, sign and date the original copy at your earliest convenience. Keep the highlighted customer copy for your records send back the original copy with a check or PO for \$15434 made out to Xcel Energy. Once I have received the signed agreement and check or PO, I can turn this work over to construction for scheduling. Mail the agreement and check to:

Xcel Energy
2763 1st Ave NW
Faribault, MN 55021

Thank you for your cooperation in this matter. Feel free to contact me at 507-251-0820 if you have any further questions or needs. After June 30th you may contact Ryan Kiefer at 507 334 2952 as I will be retiring.

Sincerely,



Donald McKenzie, Senior Designer
Xcel Energy



OVERHEAD SERVICE FORM

In consideration of Northern States Power Company, a Minnesota corporation ("Xcel Energy"), extending its facilities to make 120/240 volt, 1 phase, 3 wire overhead service available to (Customer) LE SEUER COUNTY HIGHWAY DEPT

at (Service Address) 114 HOOSAC ST (City) WATERVILLE, MN
the sum of FIFTEEN THOUSAND FOUR HUNDRED THIRTY THREE Dollars (\$ 15,434.00)
will be paid to Xcel Energy by (if other than above) LE SEUER COUNTY HIGHWAY DEPT
Address (if other than above) 88 SOUTH PARK AVE City LE CENTER, MN 56057

In accordance with the following terms:
PAYMENT IN ADVANCE FOR THE RELOCATION OF THE THREE PHASE OVERHEAD LINE TO ACCOMMODATE THE MATERIALS STORAGE YARD.

Credit Approval:
Receipt of the above amount hereby acknowledged on behalf of Xcel Energy by RYAN KIEFER

The undersigned Customer understands that such payment will give Customer no ownership interest in said facilities and said facilities shall at all times remain the sole property of Xcel Energy. Customer's and Xcel Energy's rights and obligations with respect to the facilities and the services provided through the facilities are subject to additional terms and conditions as provided in the General Rules and Regulations and/or in the Rate Schedules of Xcel Energy's Electric Rate Book for Customer's specific service, as they now exist or may hereafter be changed, on file with the state regulatory commission in the state where service is provided.

The undersigned Customer agrees to pay the cost of relocating any portion of said overhead facilities from the Company's designated location needs.

Dated this 2 day of 2
Customer: Print Full Name LE SEUER COUNTY HIGHWAY DEPT
Signature
Xcel Energy Rep: Print Full Name
Signature

Table with 4 columns: Amount (\$), Description, Amount (\$), and Notes. Includes rows for 'Specific service location or route' (\$15,434.00), 'Excess distribution construction', 'Excess service extension', and 'Temp. svc.' with sub-rows for KVA, Phase, duration, and Transformers required.

Xcel Energy Representative BRUCE HOLZMANN Xcel Energy Work Order 12217817
Construction \$ 15,434.00 Removal \$ Total \$ 15,434.00
Form 17-2758

**LE SUEUR COUNTY
REQUEST FOR COUNTY ISSUED CREDIT CARD**

Request for County Issued Credit Card for
(Place an X in the applicable box)

- Commissioner
- Department Head
- Employee

Department Head Portion:

I request the following Department/Employee be issued a Le Sueur County Credit Card.

Employee Full Name (print): Pamela Simonette

Title: Auditor-Treasurer

Department: Auditor-Treasurer

County Issued Credit Card Account Limit: \$ 5,000⁰⁰

County-Issued Credit Cards are to be used only for conducting officially approved County business.

I hereby certify that I have reviewed with the employee the Le Sueur County Issued Credit Card Policy and the Credit Card User Agreement.

Dca
Signature of Department Head

6/30/15
Date

Employee Portion:

I have reviewed the Le Sueur County Issued Credit Card Policy and the Credit Card User Agreement. I agree to abide by these policies and other policies of the County.

Pamela Simonette
Signature of Employee

6/30/15
Date

Auditor/Treasurer Portion:

Received request on (date) _____

Presented to the Le Sueur County Board on (date) _____

Action taken by Le Sueur County Board on (date) _____

- Approved as requested
- Denied
- _____

Le Sueur County Auditor/Treasurer

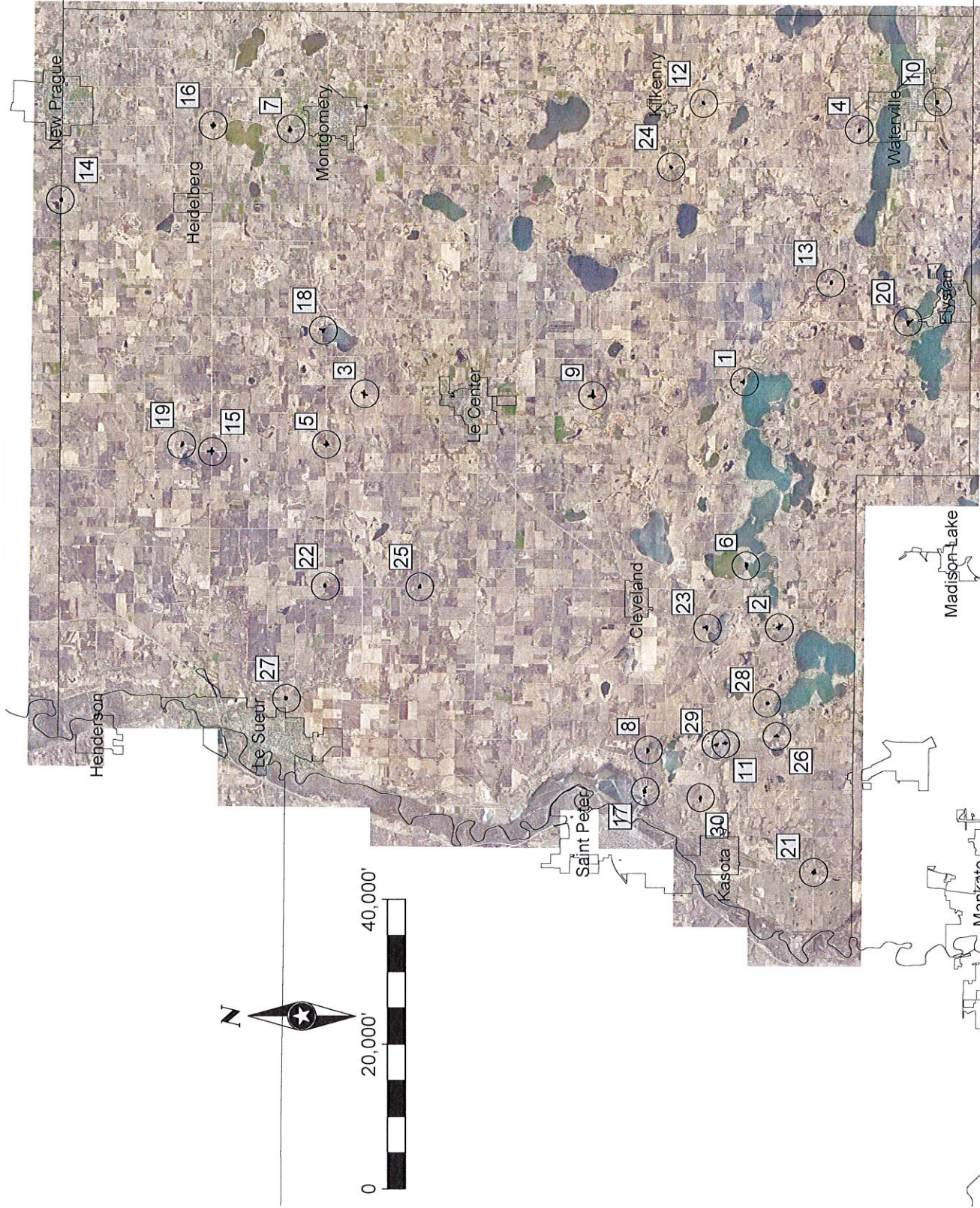
Date

If approved, card was delivered to employee on (date) _____

Employee Portion:

I acknowledge receipt of credit card bearing number _____

SP 040-070-004
INTERSECTIONS 1-30



HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND I AM A FULLY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.
 Date: 5/28/2015
 Christopher M. Cavett, PE
 Lic. No. 24719

2015 HSIP LIGHTING IMPROVEMENTS
LE SUEUR COUNTY, MINNESOTA

SEH
 PHONE: 507.388.1989
 12 CIVIC CENTER PLAZA
 SUITE 2088
 MANKATO, MN 56001-7787
 www.sehinc.com

DRAWN BY: AKF
 DESIGNER: AKF
 CHECKED BY: KST
 DESIGN TEAM

SP 040-070-004	
LESUR 128501	2
5/28/2015	33

INDEX MAP

Le Sueur County Intersection Lighting Improvements: Electric Providers at Intersections

PLAN SHEET	INT. #	INT. DESCRIPTION	ELEC. PROVIDER
4	1	CSAH 11 / CSAH 12	IPC
5	2	CR 104 / CR 105	MVEC
6	3	CSAH 11 / CR 114	MVEC
7	4	CSAH 12 / MH TH 13	XE
8	5	CSAH 26 / CSAH 11	MVEC
9	6	CSAH 18 / CSAH 15	MVEC
10	7	CR 142 / MH TH 13,21	IPC
11	8	MN TH 99 / CSAH 21	SPMU
12	9	CSAH 2 / CSAH 11	IPC
13	10	MN TH 60 / CSAH 3	XE
14	11	CSAH 18 / CSAH 19	FBWCEA
15	12	CSAH 3 / CR 168	XE
16	13	CSAH 12 / CSAH 7	MVEC
17	14	MN TH 19 / CSAH 11	MVEC
18	15	CSAH 28 / CSAH 11	MVEC
19	16	CSAH 28 / MN TH 13,21	MVEC
20	17	MN TH 99 / CSAH 29	SPMU
21	18	CSAH 26 / CSAH 32	MVEC
22	19	CSAH 11,28 / CR 120	MVEC
23	20	CSAH 16 / CSAH 11	MVEC
24	21	CR 101 / CSAH 21	XE
25	22	CSAH 26 / CSAH 15	IPC
26	23	CSAH 18 / CR 104	MVEC
27	24	CSAH 2 / MN TH 13	MVEC
28	25	CSAH 24 / CSAH 15	IPC
29	26	CR 103 / CSAH 19	FBWCEA
30	27	CSAH 26 / CR 152	LSMU
31	28	CR 103	FBWCEA
32	29	CSAH 18 / CR 107	FBWCEA
33	30	CSAH 21 / CSAH 18	FBWCEA

LEGEND

- IPC: Interstate Power Company
Phone:
- MVEC: Minnesota Valley Electric Cooperative
Phone: 952-492-2313
- XE: Xcel Energy
Phone: 507-387-2968
- SPMU: Saint Peter Municipal Utilities
Phone: 507-934-0670
- FBWCEA: Frost Benco Wells Cooperative Electric Association
Phone: 507-387-7963
- LSMU: Le Sueur Municipal Utilities
Phone: 507-665-3338, Ext. 400

Source: The Minnesota Geospatial Information Office GIS map for the Electric Utility Service Areas. See URL below.

<http://www.mngeo.state.mn.us/eusa/index.html#>

Information last updated: 08/12/14

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.
 Date: 5/28/2015
 Lic. No. 24719
 Christopher M. Cowart, PE

2015 HSIP LIGHTING IMPROVEMENTS
LE SUEUR COUNTY, MINNESOTA

PHONE: 507.388.1989
 12 CIVIC CENTER PLAZA
 SUITE 208B
 MANKATO, MN 56001-7787
 www.sehinc.com

SEH

DRAWN BY: AKF
 DESIGNER: AKF
 CHECKED BY: KST
 DESIGN TEAM

SP 040-070-004
 LESUR 128501
 5/28/2015

ELECTRIC PROVIDERS

3

33

**Le Sueur County
County Commissioners Meeting
Highway Department Agenda
July 7, 2015**

1. Road and Bridge Projects update.

2014 Projects

CSAH 14 Reconstruction

CSAH 35 Kingsway Drive

2015 Projects

Trunk Highway 169 RCUT - TED Project

CSAH 28 - CSAH 28 to CSAH 11 - CIR and Overlay

CSAH 23 - Railroad X-ing to TH 112 - Reconstruction

CR 104 - CSAH 18 to Cleveland - Bituminous Overlay

CR 107 - CSAH 18 to CSAH 21 - Bituminous Overlay

CSAH 14 - Waterville Limits to CSAH 6 - Final Bituminous Surface

CSAH 14 - Herbert St to Waterville Limits - New C&G and Bit Surface

CSAH 3 - TH 21 to CSAH 26 - Reconstruction

County Wide Bituminous Seal Coating

CSAH 26 and CSAH 28 Microsurfacing

HSIP Intersection Lighting

HSIP Chevron Improvement Project

CSAH 7 Bridge Replacement Project

CSAH 33 Bridge Replacement Project

CSAH 52 Bridge Replacement Project

Clear Lake Access Project

2016 Projects

CR 104 - CSAH 15 to 3/4 mile West - Reconstruction

CSAH 32 - CSAH 11 to CSAH 28 - FDR and Overlay

CSAH 3 - Waseca County to CSAH 14 - Bit Rehab and Overlay

CR 126 - CSAH 11 to CSAH 5 - Bit Overlay

City of Le Sueur Sidewalk and ADA improvements - included in ATIP for FY 2019 funding

2. Future Projects:

CSAH 15 - TH 112 to CSAH 26 - included in ATIP for FY 2019 funding