

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
AND
CITY OF MARSHALL
COOPERATIVE CONSTRUCTION
AGREEMENT**

Control Section:	<u>4905</u>
Trunk Highway Number (T.H.):	<u>19=014</u>
State Aid Project Number (S.A.P.):	<u>139-591-001</u>
City Project Number (C.P.):	<u>ST-006</u>

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

Recitals

1. The City will perform Rapid Rectangular Flashing Beacon ("Pedestrian Crosswalk Flasher System") construction and other associated construction upon, along, and adjacent to Trunk Highway No. 19 (East College Drive) at Whitney Street according to City-prepared plans, specifications, and special provisions designated by the City as City Project No. ST-006 and by the State and the City as State Aid Project No. 139-591-001 ("Project"); and
2. The City requests the State allow the construction of the Pedestrian Crosswalk Flasher System and the State is willing to allow said construction; and
3. The City will provide ownership and ongoing maintenance of the new Pedestrian Crosswalk Flasher System; and
4. Minnesota Statutes § 161.20, subdivision 2 authorizes the Commissioner of Transportation to make arrangements with and cooperate with any governmental authority for the purposes of constructing, maintaining, and improving the trunk highway system.

Agreement

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

- 1.1. Effective Date.** This Agreement will be effective on the date the State obtains all signatures required by Minnesota Statutes § 16C.05, subdivision 2.
- 1.2. Expiration Date.** This Agreement will expire when all obligations have been satisfactorily fulfilled.
- 1.3. Survival of Terms.** All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this Agreement, including, without limitation, the following clauses: 2.4. State Ownership of Improvements; 5. Pedestrian Crosswalk Flasher System Power, Ownership, Operation, Maintenance and Compliance; 8. 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, and Special Provisions.** City-approved plans, specifications, and special provisions designated by the City as City Project No. ST-006 and by the State and the City as State Aid Project

No. 139-591-001 are on file in the office of the City'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 City (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 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 City (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 City 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 City (and its contractor) to take such remedial measures as the State deems necessary. The State may require the City (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 City (or its contractors or consultants) for exercising its rights under this provision.
- 2.3. Traffic Control; Worker Safety.** While the City (and its contractors and consultants) are occupying the State's Trunk Highway 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 City, contractor, and consultant personnel occupying the State's Trunk Highway 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 City's contractor with respect to such improvements (if any) will flow to the State. The City will assist the State, as necessary, to enforce such warranties and guarantees, and to obtain recovery from the City'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 City 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 City's consultants and contractors.

3. Contract Award and Construction

3.1. Direction, Supervision, and Inspection of Construction.

- A.** The contract construction will be under the direction of the City 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 City will give the District Engineer at Willmar 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 City 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".

3.2. Completion of Construction. The City 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 City official and the State District Engineer's authorized representative, for unavoidable delays encountered in the performance of the contract construction.

3.3. Compliance with Laws, Ordinances, and Regulations. The City 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 City will not require the contractor to follow local ordinances or to obtain local permits.

4. Right-of-Way; Easements; Permits

4.1. The City 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.

4.2. The City 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 City 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. Pedestrian Crosswalk Flasher System Power, Ownership, Operation, Maintenance and Compliance

Power, ownership, operation, maintenance, and compliance responsibilities will be as follows for the new Pedestrian Crosswalk Flasher System on Trunk Highway No. 19 at Whitney Street:

5.1. Power. The flasher system is solar powered and will have no upfront hookup or ongoing power costs. If the systems are replaced in the future, any upfront and/or ongoing costs associated with providing power to the systems are the responsibility of the City. The City will own and be responsible for the solar panel to operate the flasher system.

5.2. Ownership, Operation and Maintenance. Upon completion of this project, the City will own the Pedestrian Crosswalk Flasher System. The City will operate and maintain the Pedestrian Crosswalk Flasher System, perform all Gopher State One Call locating, and be responsible for future system replacement, all at the City's cost and expense. The maintenance includes, but is not limited to: snow, ice, and debris removal of the pedestrian landings and ramps, associated signing, crosswalk pavement markings, and lighting without cost or expense to the State. The City will perform all system maintenance in a timely manner.

5.3. Compliance. The City will also be responsible for replacement or upgrades to meet compliance of current and future ADA requirements without cost or expense to the State. If the City fails to comply with the maintenance terms or ADA requirements, or if a safety issue develops, the State may require the City to remove the Pedestrian Crosswalk Flasher System or the State may remove it at the City's cost.

5.4. Right-of-Way Access. The City will submit to the State form "Application for Miscellaneous Work on Trunk Highway Right-of-Way" (Form 1723) in order to perform T.H. 19 pedestrian crosswalk marking maintenance as described in Article 5.2.

6. 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.

6.1. The State's Authorized Representative will be:

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

6.2. The City's Authorized Representative will be:

Name, Title: Kyle Box, City Clerk (or successor)
 Address: 344 West Main Street, Marshall, MN 56258
 Telephone: (507) 537-6775
 E-Mail: kyle.box@ci.marshall.mn.us

7. Assignment; Amendments; Waiver; Contract Complete

- 7.1. *Assignment.*** No party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other party and a written assignment agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.
- 7.2. *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.
- 7.3. *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.
- 7.4. *Contract Complete.*** This Agreement contains all prior negotiations and agreements between the State and the City. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

8. Liability; Worker Compensation Claims; Insurance

- 8.1.** 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, omissions of others, and the results thereof. Minnesota Statutes § 3.736 and other applicable law govern liability of the State. Minnesota Statutes Chapter 466 and other applicable law govern liability of the City. Notwithstanding the foregoing, the City 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 City's contractor(s) or consultant(s) or by a third party because of an act or omission by the City or its contractor(s) or consultant(s).
- 8.2.** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.
- 8.3.** The City may require its contractor to carry insurance to cover claims for damages asserted against the City's contractor.

9. Nondiscrimination

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

10. Title VI/Non-discrimination Assurances

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

11. State Audits

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

12. Government Data Practices

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

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 or the provision of the services covered here. Termination must be by written or fax notice to the City. 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.

15. Force Majeure

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

CITY OF MARSHALL

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.

CITY OF MARSHALL

RESOLUTION NUMBER 22-032

IT IS RESOLVED that the City of Marshall enter into MnDOT Agreement No. 1049268 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for Rapid Rectangular Flashing Beacon ("Pedestrian Crosswalk Flasher System") construction and maintenance by the City upon, along, and adjacent to Trunk Highway No. 19 at Whitney Street, the limits of which are defined in said Agreement.

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

CERTIFICATION

I certify that the above Resolution is an accurate copy of the Resolution adopted by the Council of the City of Marshall at an authorized meeting held on the 22nd _____ day of February _____, 2022, as shown by the minutes of the meeting in my possession.

Subscribed and sworn to me this _____ day of _____, 2022
Notary Public _____
My Commission Expires _____

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