

2N. Consideration of adopting Resolution 2023-65 accepting a grant from the Minnesota Department of Transportation (MNDOT) for the Flashing Yellow Arrow (FYA) Upgrades Project.

Prepared by: Public Works Director/City Engineer	Meeting Date: 7/10/2023	<input checked="" type="checkbox"/> Consent Agenda Item <input type="checkbox"/> Regular Agenda Item
Reviewed by: Finance Director	Approved by: City Administrator	

ACTION REQUESTED

Motion to adopt Resolution 2023-65 accepting a grant from MNDOT for the Flashing Yellow Arrow (FYA) Upgrades Project.

PREVIOUS COUNCIL ACTION

January 9, 2023: Authorized SEH to provide engineering services for Flashing Yellow Arrow (FYA) Upgrades project for a total cost of \$31,000.

June 12, 2023: Approved plans and specifications and authorized to bid for the Flashing Yellow Arrow upgrades project.

REFERENCE AND BACKGROUND

The City of Monticello successfully secured \$300,000 in funding from MNDOT’s Local Partnership Program (LPP). This project will upgrade the following intersections to include flashing yellow arrows:

- TH 25 at School Boulevard
- TH 25 at Chelsea Road
- TH 25 at I-94 Eastbound Ramp
- TH 25 at I-94 Westbound Ramp
- Fenning Avenue at I-94 Westbound Ramp
- Fenning Avenue at I-94 Eastbound Ramp
- Broadway Street at Elm Street
- Broadway Street at Hospital Access/Middle School Access
- Broadway Street at Highland Way

The grant agreement is applicable for the intersections along the state highway system which

include those signals along Highway 25 and those that connect with Interstate 94 and Fenning Avenue.

The City will be responsible for providing power and minor system maintenance for the signal systems, which includes re-lamping, cleaning, painting, etc. The City is currently responsible for maintaining the signal systems that are being modified. The draft grant agreement will be modified to include actual bid prices once bids are received and other minor changes to incorporate any Wright County feedback.

- I. **Budget Impact:** The overall project budget including construction and engineering is estimated at \$900,000. This project would be funded from the Street Lighting Improvement Fund. The City is expected to be reimbursed up to \$300,000 from MNDOT Local Partnership Program (LPP) and \$310,000 from Wright County resulting in the overall City's cost at \$313,000 for construction.
- II. **Staff Workload Impact:** City engineering staff will be involved in this project.
- III. **Comprehensive Plan Impact:** N/A

STAFF RECOMMENDED ACTION

City staff recommends approval of the grant agreement.

SUPPORTING DATA

- A. Resolution 2023-65
- B. Draft Agreement

**CITY OF MONTICELLO
WRIGHT COUNTY, MINNESOTA**

RESOLUTION NO. 2023-65

**AUTHORIZING COOPERATIVE CONSTRUCTION
AGREEMENT TERMS AND CONDITIONS
MNDOT AGREEMENT 1052576
STATE PROJECT 8823-411**

WHEREAS, The City of Monticello has applied for state funds through the Local Partnership Program; and

WHEREAS, The project would make modifications to the following signal systems:

- TH 25 and School Boulevard
- TH 25 and Chelsea Road
- TH 25 at TH 94 eastbound ramp/Oakwood Drive
- TH 25 at TH 94 westbound off ramp
- CSAH 18 at TH 94 eastbound off ramp/Chelsea Road
- CSAH 18 at TH 94 westbound off ramp/7th Street
- CSAH 75 at CSAH 18/CSAH 39
- CSAH 75 at Hart Boulevard/Highland Way
- CSAH 75 at middle school/hospital entrance

NOW THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF MONTICELLO that the City of Monticello is authorized to enter into MNDOT Agreement 1052576 with the State of Minnesota, Department of Transportation for the following purposes:

1. To provide for payment by the State to the City of the State's share of the costs of the revise signal system construction and other associated construction to be performed upon, along, and adjacent to Trunk Highway (TH) 25 at School Boulevard, TH 25 at Chelsea Road, TH 25 at the TH 94 eastbound off ramp/Oakwood Drive, TH 25 at the TH 94 westbound off ramp, County State Aid Highway (CSAH) 18 at the TH 94 eastbound off ramp/Chelsea Road, CSAH 18 at the TH 94 westbound off ramp/7th Street, CSAH 75 (East Broadway) at CSAH 18/CSAH 39, CSAH 75 (East Broadway) at Hart Boulevard/Highland Way, and CSAH 75 (East Broadway) at the middle school/hospital entrances within the corporate City limits under State Project State Project 8823-411 (TH 25=25, TH 94=392).

BE IT FURTHER RESOLVED that the Mayor and the City Administrator are authorized to execute the Agreement and any amendments to the agreement.

ADOPTED BY the Monticello City Council this 10th day of July, 2023.

ATTEST:

CITY OF MONTICELLO

Jennifer Schreiber, City Clerk

Lloyd Hilgart, Mayor

DRAFT

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

State Project Number:	<u>8823-411</u>	Original Amount Encumbered
Trunk Highway Numbers:	<u>25=25, 94=392</u>	<u>\$71,724.00</u>
Signal System A ID:	<u>1736486</u>	
Signal System B ID:	<u>1736220</u>	
Signal System C ID:	<u>1735199</u>	
Signal System D ID:	<u>1735603</u>	
Signal System E ID:	<u>1736545</u>	
Signal System F ID:	<u>1736546</u>	
Signal System H ID:	<u>City</u>	

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

Recitals

1. The City will perform revise signal system construction and other associated construction upon, along, and adjacent to Trunk Highway (TH) 25 at School Boulevard, TH 25 at Chelsea Road, TH 25 at the TH 94 eastbound off ramp/Oakwood Drive, TH 25 at the TH 94 westbound off ramp, County State Aid Highway (CSAH) 18 at the TH 94 eastbound off ramp/Chelsea Road, CSAH 18 at the TH 94 westbound off ramp/7th Street, CSAH 75 (East Broadway) at CSAH 18/CSAH 39, CSAH 75 (East Broadway) at Hart Boulevard/Highland Way, and CSAH 75 (East Broadway) at the middle school/hospital entrances according to City-prepared plans, specifications, and special provisions designated by the City and by the State as State Project 8823-411 (TH 25=25, TH 94=392) (Project); and
2. The City requests the State participate in the costs of the revise Signal Systems A through F 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; 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; 10. Liability;

Worker Compensation Claims; Insurance; 13. State Audits; 14. Government Data Practices; 15. Governing Law; Jurisdiction; Venue; and 17. Force Majeure. The terms and conditions set forth in Article 5. Signal Systems Operation and Maintenance will survive the expiration of this Agreement, but may be terminated by another agreement between the parties.

- 1.4. **Plans, Specifications, and Special Provisions.** State Aid-approved City plans, specifications, and special provisions designated by the City and by the State as State Project 8823-411 (TH 25=25, TH 94=392) are on file in the office of the City's Engineer and incorporated into this Agreement by reference (Project Plans).
- 1.5. **Exhibits.** Preliminary Schedule "I" is attached and incorporated into this Agreement.

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 notify and require the City (and its contractors and consultants) to suspend their operations until the City (and its contractors and consultants) take all necessary actions to rectify the situation to the satisfaction of the State. The State will have no liability to the City (or its contractors or consultants) for exercising or failing to exercise its rights under this provision.
- 2.3. **Traffic Control; Worker Safety.** While the City (and its contractors and consultants) are occupying the State's 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 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.
- 2.5. **Utility Relocation.** The State authorizes the City to issue Notices and Orders for utility relocation in accordance with Minnesota Statutes §161.45 and Minnesota Rules Part 8810.3100 through 8810.3600.

3. Contract Award and Construction

- 3.1. Bids and Award.** The City 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 City.** The City will, within seven days of opening bids for the construction contract, submit to the State Aid Agreements Engineer a copy of the low bid and an abstract of all bids together with the City's request for concurrence by the State in the award of the construction contract. The City will not award the construction contract until the State advises the City in writing of its concurrence.
- 3.3. Rejection of Bids.** The City may reject and the State may require the City 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 City will repeat the bidding process in a reasonable period of time, without cost or expense to the State.
- 3.4. 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 State Aid Agreements Engineer at Baxter 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*.
- 3.5. 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.
- 3.6. Plan Changes.** The State will not participate in the cost of any contract construction that is in addition to the State participation construction covered under this Agreement unless the following conditions have been met:
- A. The necessary State funds have been encumbered.
 - B. All changes in the Project Plans and all addenda, change orders, supplemental agreements, and work orders entered into by the City and its contractor for State participation construction are approved in writing by the State District Engineer's authorized representative.
- 3.7. 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 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 City 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 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. Signal Systems Operation and Maintenance

All operation and maintenance terms, including timing and power provisions, in Traffic Control Signal Agreement 87072, dated October 4, 2004, and Agreement 06675, dated November 18, 2014, for the existing traffic control signal on TH 25 at School Boulevard (Signal System A) will remain in full force and effect.

All operation and maintenance terms, including timing and power provisions, in Traffic Control Signal Agreement 79344, dated December 5, 2003, and Agreement 06675, dated November 18, 2014, for the existing traffic control signal on TH 25 at Chelsea Road (Signal System B) will remain in full force and effect.

All operation and maintenance terms, including timing and power provisions, in Traffic Control Signal Agreement 79344, dated December 5, 2003 for the existing traffic control signal on TH 25 at the TH 94 eastbound off ramp/Oakwood Drive (Signal System C) will remain in full force and effect.

All operation and maintenance terms, including timing and power provisions, in Traffic Control Signal Agreement 63157, dated September 24, 19896, and Agreement 04863, dated December 23, 2013, for the existing traffic control signal on TH 25 at the TH 94 westbound off ramp (Signal System D) will remain in full force and effect.

All operation and maintenance terms, including timing and power provisions, in Traffic Control Signal Agreement 88237, dated September 26, 2005, for the existing traffic control signals on CSAH 18 at the TH 94 eastbound off ramp/Chelsea Road (Signal System E) and on CSAH 18 at the TH 94 westbound off ramp/7th Street (Signal System F) will remain in full force and effect.

Operation and maintenance responsibilities will be as follows for the Signal System on CSAH 75 (East Broadway) at Hart Boulevard/Highland Way (Signal System H).

5.1. City Responsibilities

- A. **Power.** The City will be responsible for the hook-up cost and application to secure an adequate power supply to the service pad(s) or pole(s) and will pay all monthly electrical service expenses necessary to operate the Signal System.
- B. **Minor Signal System Maintenance.** The City will provide for the following, without cost to the State.
 - i. Maintain the signal pole mounted LED luminaires, including replacing the luminaires when necessary. The LED luminaire must be replaced when it fails or when light levels drop below recommended AASHTO levels for the installation.

- ii. Replace the Signal System(s) LED indications. Replacing LED indications consists of replacing each LED indication when it reaches end of life per the MnDOT Traffic Engineering Manual or fails or no longer meets Institute of Traffic Engineers (ITE) standards for light output.
- iii. Clean the Signal System controller cabinet and service cabinet exteriors.
- iv. Clean and paint the Signal System and luminaire mast arm extensions. Painting will be in accordance with MnDOT Standard Specification 2565.3U, unless approved by the State's District Traffic Engineer.

C. **Timing; Other Maintenance.** The City will maintain the signing and perform all other Signal System and signal pole luminaire circuit maintenance without cost to the State. All Signal System timing will be determined by the City, and no changes will be made without the City's approval.

5.2. **Related Agreements.** This Agreement will supersede and terminate the operation and maintenance terms of Agreement 88237, dated September 26, 2005, between the parties for the intersection of CSAH 75 (East Broadway) at Hart Boulevard/Highland Way.

6. Basis of State Cost

6.1. **Schedule "I".** The Preliminary Schedule "I" includes anticipated State participation construction items and the construction engineering cost share covered under this Agreement.

6.2. **State Participation Construction.** The State will participate in the following at the percentages indicated. The construction includes the State's proportionate share of item costs for mobilization and traffic control.

- A. 100 Percent will be the State's rate of cost participation in all of the revise Signal Systems A through F construction. The construction includes, but is not limited to, those construction items tabulated on Sheet 2 of the Preliminary Schedule "I."

6.3. **State Furnished Materials.** The State will furnish nine TS2 "R" Cabinets (State Furnished Materials), according to the Project Plans, to operate the traffic control signal systems covered under this Agreement. The City's lump sum share for State Furnished Materials is **\$138,233.80**. The State's lump sum share for State Furnished Materials is **\$90,042.20**. The City and State's cost shares for State Furnished Materials will be deducted from the State's total construction cost share as shown in the Schedule "I."

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

6.5. **Capped Funds.** The State's funds on this Project are capped at \$300,000.00.

6.6. **Addenda, Change Orders, Supplemental Agreements, and Work Orders.** The State will share in the costs of construction contract addenda, change orders, supplemental agreements, and work orders that are necessary to complete the State participation construction covered under this Agreement and are approved in writing by the State District Engineer's authorized representative.

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

7. State Cost and Payment by the State

7.1. **State Cost.** **\$71,724.00** is the State's estimated share of the costs of the contract construction (less State Furnished Materials cost), which includes the construction engineering cost share and a contingency amount as shown in the Preliminary Schedule "I." The Preliminary Schedule "I" was prepared using

anticipated construction items and estimated quantities and unit prices and may include any credits or lump sum costs. Upon review of the construction contract bid documents described in Article 3.2, the State will decide whether to concur in the City's award of the construction contract and, if so, prepare a Revised Schedule "I" based on construction contract construction items, quantities, and unit prices, which will replace and supersede the Preliminary Schedule "I" as part of this Agreement. The contingency amount is provided to cover the cost difference between the Preliminary Schedule "I" and the Revised Schedule "I," overruns of the plans estimated quantities of State participation construction, and State approved additional construction including construction engineering costs.

- 7.2. *Conditions of Payment.*** The State will pay the City the State's total estimated construction cost share, which does not include the construction engineering cost share or the contingency amount, as shown in the Revised Schedule "I," after the following conditions have been met:
- A. Encumbrance by the State of the State's total estimated construction cost share, the construction engineering cost share, and the contingency amount, as shown in the Revised Schedule "I."
 - B. Execution of this Agreement and transmittal to the City, including a letter advising of the State's concurrence in the award of the construction contract.
 - C. The State's receipt of a written request from the City for the advancement of funds. The request will include certification by the City that all necessary parties have executed the construction contract.
- 7.3. *Limitations of State Payment; No State Payment to Contractor.*** The State's participation in the contract construction is limited to the State participation construction shown in Article 7, 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 City. The City's contractor is not intended to be and will not be deemed to be a third party beneficiary of this Agreement. The City's contractor will have no right to receive payment from the State. The State will have no responsibility for claims asserted against the City by the City's contractor.
- 7.4. *Construction Costs Exceeding Encumbered Amount.*** Whenever it appears the cost of the State participation construction covered under this Agreement is about to exceed the current amount of encumbered State funds, the City will notify the State District Engineer's authorized representative in writing prior to performance of the additional State participation construction. Notification will include an estimate in the amount of additional funds necessary to complete the State participation construction including construction engineering costs and the reason(s) why the current amount encumbered will be exceeded. The State will, upon its approval of the additional State participation construction, encumber the necessary additional funds. That action will have the effect of amending this Agreement so as to include the State's share of the costs of the additional construction.

Should the City cause the performance of additional contract construction which would otherwise qualify for State participation construction covered under this Agreement, but for which the State has not previously encumbered funds, that additional contract construction is done at the City's own risk. The City will notify the State District Engineer's authorized representative in writing of the additional State participation construction. Notification will include an estimate in the amount of additional funds necessary to cover the additional State participation construction including construction engineering costs and the reason(s) why the current amount encumbered was exceeded. If the State District Engineer's authorized representative approves the additional State participation construction, the City's claim for compensation along with a request for encumbrance of the necessary additional funds will be submitted to the State's Budget Section for review of compliance with Minnesota Statutes § 16A.15, subdivision 3, but no guarantee is made that the claim will be approved by the State's Budget Section. If the claim for compensation and the request for encumbrance of the necessary additional funds are approved by the

State's Budget Section, that action will have the effect of amending this Agreement so as to include the State's share of the costs of the additional construction.

7.5. Records Keeping and Invoicing by the City. The State will provide the City with a Payment Processing Package containing a Modified Schedule "I" form, instructions, and samples of documents for processing final payment of the State participation construction covered under this Agreement.

The City will keep records and accounts that enable it to provide the State with the following prior to final payment:

- A. A copy of the Modified Schedule "I" which includes final quantities of State participation construction.
- B. Copies of the City contractor's invoice(s) covering all contract construction.
- C. Copies of the endorsed and canceled City warrant(s) or check(s) paying for final contract construction, or computer documentation of the warrant(s) issued, certified by an appropriate City official that final construction contract payment has been made.
- D. Copies of all construction contract change orders, supplemental agreements, and work orders.
- E. A certification form, attached to a copy of the Final Schedule "I," both provided by the State. The certification form will be signed by the City'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 City to its contractor for all contract construction.
- F. When requested, copies certified by the City's Engineer, of material sampling reports and material testing results for the materials furnished for the contract construction.
- G. A copy of the "as built" plan sent to the State Aid Agreements Engineer.
- H. A formal invoice (original and signed) in the amount due the City as shown in the Final Schedule "I."

7.6. Final Payment by the State. Upon completion of all contract construction, the State will prepare a Final Schedule "I" according to the procedures detailed in the Payment Processing Package and submit a copy to the City. The Final Schedule "I" will be based on final quantities, and include all State participation construction items and the construction engineering cost share covered under this Agreement. If the final cost of the State participation construction exceeds the amount of funds advanced by the State, the State will pay the difference to the City without interest. If the final cost of the State participation construction is less than the amount of funds advanced by the State, the City will refund the difference to the State without interest.

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

8. 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.

8.1. The State's Authorized Representative will be:

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

8.2. The City's Authorized Representative will be:

Name, Title: Rachel Leonard, City Administrator (or successor)
 Address: 505 Walnut Street, Monticello, MN 55362
 Telephone: (763) 271-3275
 Email: rachel.leonard@ci.monticello.mn.us

9. Assignment; Amendments; Waiver; Contract Complete

- 9.1. *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. The foregoing does not prohibit the City from contracting with a third-party to perform City maintenance responsibilities covered under this Agreement.
- 9.2. *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.
- 9.3. *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.
- 9.4. *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.

10. Liability; Worker Compensation Claims; Insurance

- 10.1.** Each party is responsible for its own acts, omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of others and the results thereof. Minnesota Statutes § 3.736 and other applicable law govern liability of the State. Minnesota Statutes Chapter 466 and other applicable law govern liability of the City. 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 attorney's 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).
- 10.2.** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.
- 10.3.** The City may require its contractor to carry insurance to cover claims for damages asserted against the City's contractor.

11. Nondiscrimination

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

12. Title VI/Nondiscrimination 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. If federal funds are included in this Agreement, 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.

13. 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.

14. 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.

15. 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.

16. Termination; Suspension

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

16.2. *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 City. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the City 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.

16.3. *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.

17. 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.

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DRAFT

STATE ENCUMBRANCE VERIFICATION

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

Signed: DRAFT – DO NOT SIGN

Date: _____

SWIFT Purchase Order: _____

CITY OF MONTICELLO

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: DRAFT – DO NOT SIGN

Title: _____

Date: _____

By: DRAFT – DO NOT SIGN

Title: _____

Date: _____

DEPARTMENT OF TRANSPORTATION

Recommended for Approval:

By: DRAFT – DO NOT SIGN
(District Engineer)

Date: _____

Approved:

By: DRAFT – DO NOT SIGN
(State Design Engineer)

Date: _____

COMMISSIONER OF ADMINISTRATION

By: DRAFT – DO NOT SIGN
(With Delegated Authority)

Date: _____

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

PRELIMINARY SCHEDULE "I"

Agreement 1052576

City of Monticello

State Project 8823-411 (TH 25=025, TH 94=392)

Preliminary: June 15, 2023

State Funds

Revise signal system construction performed under

City contract with _____

located on TH 25 at School Boulevard, TH 25 at Chelsea Road, TH 25 at TH 94 eastbound off ramp/Oakdwood Drive, TH 25 at TH 94 westbound off ramp, CSAH 18 at TH 94 eastbound off ramp/Chelsea Road, CSAH 18 at TH 94 westbound off ramp/7th Street, CSAH 75 (East Broadway) at CSAH 18/CSAH 39, CSAH 75 (East Broadway) at Hart Boulevard/Highland Way, and CSAH 75 (East Broadway) at middle school/hospital entrances

STATE COST PARTICIPATION	
Revise Signal System Construction Work Items From Sheet 2	150,100.00
Construction Engineering (8%)	12,008.00
State Furnished Materials - State Cost From Sheet 3	90,042.20
(1) Subtotal	252,150.20
Credit for State Furnished Materials from Sheet 3	(228,276.00)
(2) Total State Cost	23,874.20
(3) Contingency Amount	47,849.80
Encumbered Amount	\$71,724.00

- (1) State funds capped as described in Article 6.5 of the Agreement
- (2) Amount of advance payment as described in Article 7 of the Agreement (estimated amount)
- (3) For the State's use only as described in Article 7 of the Agreement

(1) 100% STATE

12345

ITEM NUMBER	SP 8823-411 REVISE SIGNAL SYSTEM CONSTRUCTION WORK ITEM	UNIT	QUANTITY	UNIT PRICE	COST (1)
2011.601	AS BUILT	Lump Sum	0.67	3,000.00	2,010.00
2021.501	MOBILIZATION	Lump Sum	0.33	40,000.00	13,200.00
2563.601	TRAFFIC CONTROL	Lump Sum	0.33	8,000.00	2,640.00
2565.602	INSTALL APS PUSH BUTTON AND SIGN	Each	4.00	500.00	2,000.00
2565.616	REVISE SIGNAL SYSTEM A	System	0.50	32,000.00	16,000.00
2565.616	REVISE SIGNAL SYSTEM B	System	0.50	41,000.00	20,500.00
2565.616	REVISE SIGNAL SYSTEM C	System	0.75	25,000.00	18,750.00
2565.616	REVISE SIGNAL SYSTEM D	System	1.00	19,000.00	19,000.00
2565.616	REVISE SIGNAL SYSTEM E	System	0.40	68,000.00	27,200.00
2565.616	REVISE SIGNAL SYSTEM F	System	0.40	72,000.00	28,800.00
				TOTAL	150,100.00
			(1) 100% STATE COST	150,100.00	

DRAFT

Data is considered Non-public prior to project award under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13.

(2) 100% STATE

12345

ITEM NUMBER	SP 8823-411 STATE FURNISHED MATERIALS - STATE COST	UNIT	QUANTITY	UNIT PRICE	COST (2)
	** LUMP SUM COST **				
	SIGNAL SYSTEM A - TS2 "R" CABINET	EACH	0.50	25,364.00	12,682.00
	SIGNAL SYSTEM B - TS4 "R" CABINET	EACH	0.50	25,364.00	12,682.00
	SIGNAL SYSTEM C - TS4 "R" CABINET	EACH	0.75	25,364.00	19,023.00
	SIGNAL SYSTEM D - TS4 "R" CABINET	EACH	1.00	25,364.00	25,364.00
	SIGNAL SYSTEM E - TS4 "R" CABINET	EACH	0.40	25,364.00	10,145.60
	SIGNAL SYSTEM F - TS4 "R" CABINET	EACH	0.40	25,364.00	10,145.60
				TOTAL	90,042.20
			(2) 100% STATE COST	90,042.20	

(3) 100% CITY

ITEM NUMBER	SP 8823-411 STATE FURNISHED MATERIALS - CITY COST	UNIT	QUANTITY	UNIT PRICE	COST (3)
	** LUMP SUM COST **				
	SIGNAL SYSTEM A - TS2 "R" CABINET	EACH	0.50	25,364.00	12,682.00
	SIGNAL SYSTEM B - TS4 "R" CABINET	EACH	0.50	25,364.00	12,682.00
	SIGNAL SYSTEM C - TS4 "R" CABINET	EACH	0.25	25,364.00	6,341.00
	SIGNAL SYSTEM E - TS4 "R" CABINET	EACH	0.60	25,364.00	15,218.40
	SIGNAL SYSTEM F - TS4 "R" CABINET	EACH	0.60	25,364.00	15,218.40
	SIGNAL SYSTEM G - TS4 "R" CABINET	EACH	1.00	25,364.00	25,364.00
	SIGNAL SYSTEM H - TS4 "R" CABINET	EACH	1.00	25,364.00	25,364.00
	SIGNAL SYSTEM J - TS4 "R" CABINET	EACH	1.00	25,364.00	25,364.00
				TOTAL	138,233.80
			(3) 100% CITY COST	138,233.80	

CITY OF MONTICELLO

RESOLUTION

IT IS RESOLVED that the City of Monticello enter into MnDOT Agreement 1052576 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for payment by the State to the City of the State's share of the costs of the revise signal system construction and other associated construction to be performed upon, along, and adjacent to Trunk Highway (TH) 25 at School Boulevard, TH 25 at Chelsea Road, TH 25 at the TH 94 eastbound off ramp/Oakwood Drive, TH 25 at the TH 94 westbound off ramp, County State Aid Highway (CSAH) 18 at the TH 94 eastbound off ramp/Chelsea Road, CSAH 18 at the TH 94 westbound off ramp/7th Street, CSAH 75 (East Broadway) at CSAH 18/CSAH 39, CSAH 75 (East Broadway) at Hart Boulevard/Highland Way, and CSAH 75 (East Broadway) at the middle school/hospital entrances within the corporate City limits under State Project State Project 8823-411 (TH 25=25, TH 94=392).

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

CERTIFICATION

I certify that the above Resolution is an accurate copy of the Resolution adopted by the Council of the City of Monticello at an authorized meeting held on the _____ day of _____, 2023, as shown by the minutes of the meeting in my possession.

Subscribed and sworn to me this _____ day of _____, 2023
Notary Public _____
My Commission Expires _____

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