



# Board of County Commissioners Agenda Request

2H  
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Agenda Item #

**Requested Meeting Date:** 3-26-19

**Title of Item:** Enbridge Road Use Agreement

<input type="checkbox"/> REGULAR AGENDA <input checked="" type="checkbox"/> CONSENT AGENDA <input type="checkbox"/> INFORMATION ONLY	<b>Action Requested:</b> <input type="checkbox"/> Approve/Deny Motion <input checked="" type="checkbox"/> Adopt Resolution (attach draft) <small><i>*provide copy of hearing notice that was published</i></small>	<input type="checkbox"/> Direction Requested <input type="checkbox"/> Discussion Item <input type="checkbox"/> Hold Public Hearing*
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<b>Submitted by:</b> John Welle	<b>Department:</b> Highway Department
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<b>Presenter (Name and Title):</b> NA	<b>Estimated Time Needed:</b> NA
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**Summary of Issue:**  
 In addition to processing various utility crossing permits, special use permits, and entrance permits for the Enbridge Line 3 project, a Road Use Agreement has been negotiated with Enbridge Energy to outline the use, maintenance, and repair of roads used by the various vehicles that will use county highways during construction of the project. Attached is the proposed agreement with a resolution to authorize this agreement.

**Alternatives, Options, Effects on Others/Comments:**

**Recommended Action/Motion:**  
 Adopt resolution.

**Financial Impact:**  
 Is there a cost associated with this request?  Yes  No  
 What is the total cost, with tax and shipping? \$  
 Is this budgeted?  Yes  No *Please Explain:*

Legally binding agreements must have County Attorney approval prior to submission.

**CERTIFIED COPY OF RESOLUTION OF COUNTY BOARD OF AITKIN COUNTY, MINNESOTA**

**ADOPTED March 26, 2019**

By Commissioner: xx

**20190326-0xx**

**Enbridge Road Use Agreement**

**WHEREAS**, Enbridge Energy intends to construct a pipeline through Aitkin County as part of the Line 3 Replacement Project, and

**WHEREAS**, various Aitkin County Highways will be used by vehicles involved in the construction of this project, and

**WHEREAS**, Agreement HR-MN-AI-005, has been written to prescribe the terms and conditions of the use, maintenance, and repair of Aitkin County Highways by Enbridge Energy during the construction period.

**NOW THEREFORE BE IT RESOLVED**, that the Aitkin County Engineer is hereby authorized and directed for and on behalf of the County to execute and enter into Agreement HR-MN-AI-005, a copy of which said agreement was before the County Board and which is made a part hereof by reference.

Commissioner xx moved the adoption of the resolution and it was declared adopted upon the following vote

**FIVE MEMBERS PRESENT**

**All Members Voting Yes**

**STATE OF MINNESOTA}  
COUNTY OF AITKIN}**

I, Jessica Seibert, County Administrator, Aitkin County, Minnesota do hereby certify that I have compared the foregoing with the original resolution filed in the Administration Office of Aitkin County in Aitkin, Minnesota as stated in the minutes of the proceedings of said Board on the 26<sup>th</sup> day of March 2019, and that the same is a true and correct copy of the whole thereof.

**Witness my hand and seal this 26<sup>th</sup> day of March 2019**

\_\_\_\_\_  
Jessica Seibert  
County Administrator

**ROAD USE AGREEMENT**

**THIS ROAD USE AGREEMENT** (this “Agreement”) is made this \_\_ day of \_\_\_\_\_, 2018 (“Effective Date”), by and between Aitkin County Highway Department (County), County of Aitkin, State of Minnesota, by the County Engineer, John Welle, and Enbridge Energy, Limited Partnership, a Delaware limited partnership, with an office located at 119 N 25<sup>th</sup> Street East, Superior, Wisconsin 54880, and its affiliates and any of its or its affiliates’ respective agents, employees, contractors, subcontractors, material suppliers, vendors, transport providers, designees and representatives (“Enbridge”). (Collectively, the “Parties” and each a “Party”).

**WHEREAS**, Enbridge intends to lay, construct, operate, maintain, inspect, remove, alter, abandon in place, replace, relocate and/or reconstruct a pipeline through, around or in the vicinity of various portions of County; and

**WHEREAS**, Enbridge wishes to use County roads for pipeline construction purposes over which it will be necessary to haul materials and equipment to construct a pipeline and associated facilities (the “Project”); and

**WHEREAS**, it is the mutual desire and intent of the Parties to permit Enbridge’s use of roads in a manner so that any road used by Enbridge will be undamaged or minimally damaged and that any damage resulting from Enbridge’s use of roads that may occur will be borne by Enbridge as is reasonable and necessary to leave the roads in a condition as good as they existed prior to Enbridge’s use to the extent practicable.

**NOW, THEREFORE**, in consideration of the above recitals and the mutual covenants contained herein, the Parties agree as follows:

**1. Routing and Access Approval.** Execution of this Agreement shall represent a grant to Enbridge by County of access to roads as further detailed in the Principal Road Use Schedule attached hereto as Exhibit A (“Road Schedule”).

- A. The Road Schedule may be revised from time to time by mutual agreement of the Parties, or their designates. As the Road Schedule is revised and roads are added or removed, pre-construction and post-construction improvement details shall be prepared and added to the Road Schedule using the same methodology as was used to establish the improvement descriptions included in the Road Schedule.
- B. During construction, County and Enbridge may meet as needed to disclose and discuss Project activities, including anticipated material and equipment deliveries,

equipment crossings, and traffic movement which may be reflected as changes in the Road Schedule.

2. **Term.** This Agreement shall control Enbridge's use of the roads as outlined in the Road Schedule ("Roads") commencing from the above-stated Effective Date. Enbridge's use of the Roads shall continue until such time that Enbridge provides written notice to the County Engineer of completion of Enbridge's Project, or such earlier time as may be agreed upon by and between the Parties. Upon providing said written notice, Enbridge's access rights to the Roads will be deemed terminated.

3. **Inspection of the Roads.** Either Party may perform an inspection of the Roads prior to the commencement of the Project. The Parties may inspect the Roads using any method, including the use of video, to document the condition of the Roads prior to Enbridge's commencement of the Project. In the event an inspection is performed, the non-inspecting Party may provide a representative to accompany the inspecting Party on its inspection. Upon written request by either Party, the inspecting Party shall provide the requesting party with a copy of documentation from any inspection, including video evidence.

4. **Overweight/Oversize Permits.** For all loads that require oversize/overweight permitting by Minnesota law, County shall issue an oversize/overweight permit upon the filing of the County's permit application on behalf of Enbridge. The County reserves the right to require route modification by the applicant and to deny the permit in instances where County infrastructure is not capable of safely carrying the proposed oversize/overweight load as determined by the County.

5. **Emergency Repairs.** Notwithstanding the foregoing, in the event Enbridge is reasonably believed by County to have caused damage to Roads of a magnitude sufficiently great to create a hazard to the motoring public, which in County's reasonable opinion warrants an immediate repair or road closing, County may unilaterally make or authorize repair, with the reasonable, documented costs thereof paid by Enbridge within thirty (30) days of the date an invoice is submitted for reimbursement. County will make a good faith attempt to contact Enbridge at the time the damage is discovered to allow Enbridge an opportunity to view the damage before a repair is started. County shall photograph, videotape and otherwise document the conditions and make all such documentation available to Enbridge. Any such emergency repair shall be subject to post-repair negotiations by the Parties, involvement of the intermediary, as provided in Section 8, and, if necessary, adjudication. If such post-repair proceedings favor Enbridge, County will reimburse Enbridge for amounts paid to fund the repair, if any.

6. **Post Project.** Enbridge and County shall have mutual obligations to each other upon completion of pipeline construction and project area restoration. These mutual obligations are as follows:

- A. Remedy of compensable haul road damages, if any, shall be accomplished as follows:
  - i. Enbridge shall supply monetary compensation equal to restoration costs in order for County to restore Roads as it sees fit; or
  - ii. Road restoration services shall be performed or contracted by Enbridge on behalf of County in order to restore Roads.
- B. Upon Enbridge's request, County shall assist with determining the most cost effective process for compensation or restoration of Roads.
- C. In conjunction with and at the time of County's receipt of compensation under 6(A)(i) or 6(A)(ii) above, County shall provide Enbridge with a release of claims in connection with Enbridge's obligations pursuant to this Agreement.

7. **Indemnity.** During the term of this Agreement, Enbridge shall indemnify County for all reasonable damages incurred by the County caused by Enbridge's use of the Roads.

8. **Dispute Resolution.** If Enbridge and County do not mutually agree upon road damages, the matter shall be determined by the use of arbitration before three disinterested persons, one to be appointed by County, one by Enbridge, and the third by the two persons aforesaid; and the award of such three arbitrators, or any two of them, in writing, shall be final. The cost of such arbitration shall be borne equally by Enbridge and County. Enbridge and County agree to waive their respective right, whatsoever they may have, to court review of the arbitrators' final decision.

9. **Severability.** If any provision of this Agreement is held wholly or partially invalid under any applicable law, such invalidity shall not affect the validity of the balance of this Agreement.

10. **Entire Agreement.** This Agreement contains the entire understanding of the Parties as to the matters set forth herein, and this Agreement supersedes any prior agreements or understandings by and between the Parties, whether written or oral.

11. **Amendment.** Any amendment or modification to this Agreement must be made in writing and signed by both Parties. This provision may not be orally waived.

12. **Jurisdiction.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota.

13. **Enforcement.** Failure of a Party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained or any of them upon any other Party imposed, shall not constitute or be construed as a waiver or relinquishment of any Party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

14. **Assignment.** This Agreement shall enure to the benefit of and shall be binding upon the Parties, their respective successors, permitted assignees, legal representatives and their respective agents, contractors, subcontractors, material suppliers, vendors, employees, respective transport providers and designees.

15. **Counterparts.** The Parties may execute different copies of this Agreement in lieu of executing the same copy, and each Party shall be bound by the terms of this Agreement upon delivery of a copy bearing the Party's signature by e-mail or facsimile to the other Party or its attorney.

**Aitkin County**

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_

**Enbridge Energy, Limited Partnership  
By: Enbridge Pipelines (Lakehead) L.L.C.  
Its General Partner**

By:  \_\_\_\_\_

John McKay, Authorized Agent

## EXHIBIT A

### Aitkin County MN

State	Road	Surface Type	Jurisdiction	Miles	County	Tract #
MN	CSAH 20	Gravel	Aitkin County	3.5	Aitkin	HR-MN-AI-005
MN	CSAH 19/590th St	Gravel	Aitkin County	3	Aitkin	HR-MN-AI-005
MN	CSAH 19/410th Ave	Gravel	Aitkin County	1.85	Aitkin	HR-MN-AI-005
MN	CSAH 19/605th St	Gravel	Aitkin County	2	Aitkin	HR-MN-AI-005
MN	CSAH 29/Osprey Ave	Gravel	Aitkin County	13.5	Aitkin	HR-MN-AI-005
MN	CR-68/ 540th St	Gravel	Aitkin County	3.4	Aitkin	HR-MN-AI-005
MN	CSAH 7/605th St	Asphalt	Aitkin County	2	Aitkin	HR-MN-AI-005
MN	CSAH 7/610th St	Asphalt	Aitkin County	3.25	Aitkin	HR-MN-AI-005
MN	CR-18/560th St	Gravel	Aitkin County	12	Aitkin	HR-MN-AI-005
MN	CR-10/ Great River Rd	Asphalt	Aitkin County	33.35	Aitkin	HR-MN-AI-005
MN	320th Pl	Gravel	Aitkin County	2.4	Aitkin	HR-MN-AI-005
MN	CR-65/Loon Ave	Gravel	Aitkin County	9	Aitkin	HR-MN-AI-005
MN	CR-36/579th St	Asphalt	Aitkin County	4.25	Aitkin	HR-MN-AI-005
MN	CR-3/480th St	Asphalt	Aitkin County	4.75	Aitkin	HR-MN-AI-005
MN	CR-63/255th Ave	Asphalt	Aitkin County	3	Aitkin	HR-MN-AI-005

