



Board of County Commissioners Agenda Request

5B
Agenda Item #

Requested Meeting Date: 5-10-22

Title of Item: MnDOT Cooperative Construction Agreement No. 1049576

<input checked="" type="checkbox"/> REGULAR AGENDA	Action Requested:	<input type="checkbox"/> Direction Requested
<input type="checkbox"/> CONSENT AGENDA	<input type="checkbox"/> Approve/Deny Motion	<input type="checkbox"/> Discussion Item
<input type="checkbox"/> INFORMATION ONLY	<input checked="" type="checkbox"/> Adopt Resolution (attach draft) <i>*provide copy of hearing notice that was published</i>	<input type="checkbox"/> Hold Public Hearing*

Submitted by: John Welle	Department: Highway
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Presenter (Name and Title): John Welle, Aitkin County Engineer	Estimated Time Needed: 10 minutes
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Summary of Issue:
At the April 28, 2020 County Board of Commissioners meeting, the Board approved by consensus that improvements to the intersection of Aitkin County Road 54/56 and US Hwy 169/Trunk Highway 210 be made as part of the MnDOT reconstruction project on US Hwy 169/TH 210 in this area. These improvements would be enabled through a cooperative construction agreement with Aitkin County paying 50% of the cost of the improvements. At the time, it was estimated that Aitkin County's cost would be \$35,000 to \$50,000. The written summary of the proposed improvements that was prepared for the April 28, 2020 discussion is attached for reference.

Attached is Cooperative Construction Agreement No. 1049576 that has been developed by MnDOT to accomplish this work. Based on updated cost estimates, Aitkin County's cost of this work has increased to an estimated \$70,557.27, which will be further adjusted upon the determination of final bid unit prices.

This agreement has been reviewed by the County Attorney's office and has been found to be appropriate as to form and content.

Attached is a resolution authorizing execution of this agreement.

Alternatives, Options, Effects on Others/Comments:

Recommended Action/Motion:
Authorize by resolution.

Financial Impact:
Is there a cost associated with this request? Yes No
What is the total cost, with tax and shipping? \$ 70,557.27
Is this budgeted? Yes No *Please Explain:*
Costs will be budgeted as part of the 2023 Capital Infrastructure Budget.

FOR REFERENCE: From April 28, 2020 Board Agenda Item

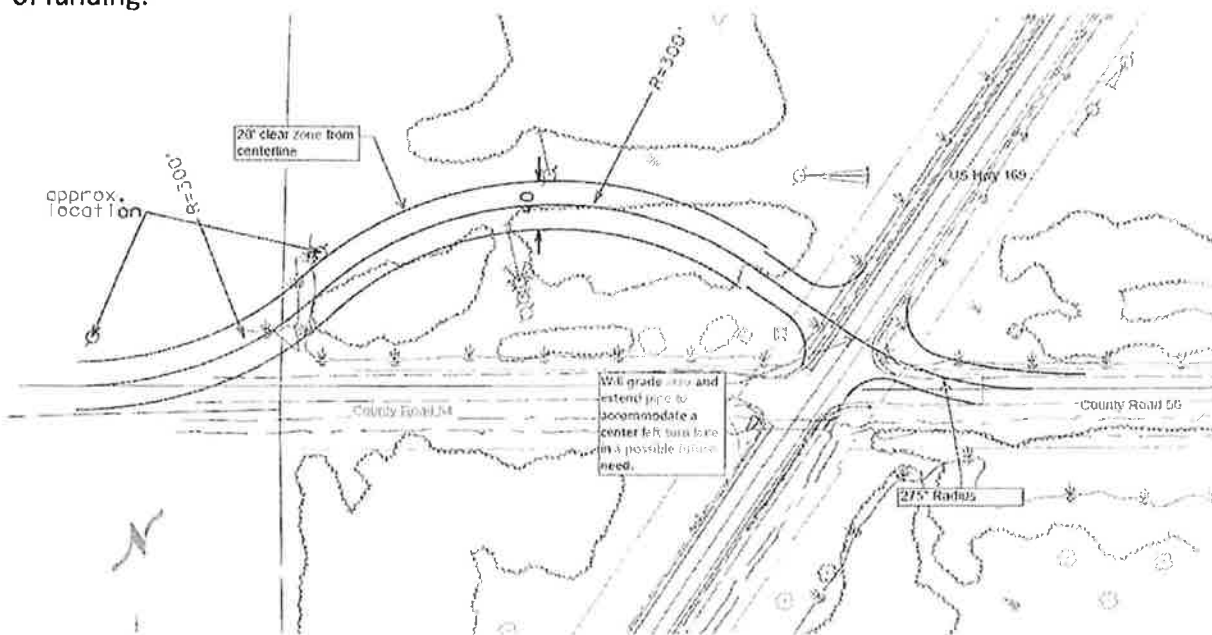
Attachment For US Hwy 169 - CR 54 – CR 56 Intersection

Summary:

The MnDOT project manager for the US Hwy 169 project has been in contact with my office regarding citizen comments received during the project open house on January 23, 2020. During that event, at least two residents identified safety concerns with the intersection of US Hwy 169 – CR 54 – CR 56 located approximately six miles north of Aitkin. As shown in the drawing below, this is a skewed intersection, which can make it difficult for motorists to see approaching traffic on the highway. To correct the skewed angle of the intersection, approximately 1,000 feet of the approaches on CR 54 to the west and CR 56 to the east would need to be realigned as also shown on the drawing.

Because of the very low traffic volumes (less than 100) on these county roads and the lack of crash history, MnDOT has informed us that these improvements would only be made under a cooperative construction agreement whereby Aitkin County would pay 50% of the cost of the improvements on CR 54 and CR 56. That cost has been estimated at \$70,000 to \$100,000. This work would happen as part of the US Hwy 169 construction project in 2022, with MnDOT providing all necessary engineering work including permitting and right of way acquisition.

Consensus is being requested to have MnDOT include these improvements in their project, with costs to be shared through a future cooperative construction agreement. The costs of this project would be added to our 2022 capital road improvement program and paid as part of the annual \$600,000 levy for county road construction. This \$35,000 to \$50,000 cost will reduce the amount of funding available for other projects and may contribute to 2023 and 2024 projects being delayed due to lack of funding.



**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
AND
AITKIN COUNTY
COOPERATIVE CONSTRUCTION
AGREEMENT**

State Project Number (SP):	<u>0119-30</u>	Estimated Amount Receivable
Trunk Highway Number (TH):	<u>210=002</u>	<u>\$70,557.27</u>
State Project Number (SP):	<u>0116-49</u>	
Trunk Highway Number (TH):	<u>169=035</u>	
Federal Project Number:	<u>CRRSAA 0122(152)</u>	
Bridge Number:	<u>01006</u>	
Bridge Number:	<u>01004</u>	

This Agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("State") and Aitkin County, acting through its Board of Commissioners ("County").

Recitals

1. The State will perform grading, bituminous and concrete surfacing, lighting, Americans with Disabilities Act (ADA) improvements, box culvert, and Bridge No. 01006 and No. 01004 construction and other associated construction upon, along, and adjacent to Trunk Highway No. 210 from the Ripple River to the Trunk Highway No. 169 north junction according to State-prepared plans, specifications, and special provisions designated by the State as State Project No. 0119-30 (TH 210=002); upon, along, and adjacent to Trunk Highway No. 169 from the north junction of Trunk Highway No. 210 to the Mississippi River according to State-prepared plans, specifications, and special provisions designated by the State as State Project No. 0116-49 (TH 69=035) ("Project"); and
2. The County wishes to participate in the costs of the grading, paving, and seeding construction and associated construction engineering; and
3. Agreement No. 1050397 between the State and County will address the required detour for this Project; and
4. Agreement No. 1049575 between the State and the City of Aitkin will address additional maintenance responsibilities not addressed in this Agreement; and
5. Minnesota Statutes § 161.45, subdivision 2, allows for City-owned utility relocation to be included in a State construction contract, and payment by the City for such relocation according to applicable statutes and rules for utilities on trunk highways; and
6. 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: 3. Maintenance by the County; 8. Liability; Worker Compensation Claims; 10. State Audits; 11. Government Data Practices; 12. Governing Law; Jurisdiction; Venue; and 14. Force Majeure.
- 1.4. **Plans, Specifications, and Special Provisions.** Plans, specifications, and special provisions designated by the State as State Project No. 0119-30 (TH 210=002) and No. 0116-49 (TH 169=035) are on file in the office of the Commissioner of Transportation at St. Paul, Minnesota, and incorporated into this Agreement by reference ("Project Plans").
- 1.5. **Exhibits.** Preliminary Schedule "I" is on file in the office of the County Engineer and attached and incorporated into this Agreement.

2. Construction by the State

- 2.1. **Contract Award.** The State will advertise for bids and award a construction contract to the lowest responsible bidder according to the Project Plans.
- 2.2. **Direction, Supervision, and Inspection of Construction.**
 - A. **Supervision and Inspection by the State.** The State will direct and supervise all construction activities performed under the construction contract and perform all construction engineering and inspection functions in connection with the contract construction. All contract construction will be performed according to the Project Plans.
 - B. **Inspection by the County.** The County participation construction covered under this Agreement will be open to inspection by the County. If the County believes the County participation construction covered under this Agreement has not been properly performed or that the construction is defective, the County will inform the State District Engineer's authorized representative in writing of those defects. Any recommendations made by the County are not binding on the State. The State will have the exclusive right to determine whether the State's contractor has satisfactorily performed the County participation construction covered under this Agreement.
- 2.3. **Plan Changes, Additional Construction, Etc.**
 - A. The State will make changes in the Project Plans and contract construction, which may include the County participation construction covered under this Agreement and will enter into any necessary addenda and change orders with the State's contractor that are necessary to cause the contract construction to be performed and completed in a satisfactory manner. The State District Engineer's authorized representative will inform the appropriate County official of any proposed addenda and change orders to the construction contract that will affect the County participation construction covered under this Agreement.
 - B. The County may request additional work or changes to the work in the plans as part of the construction contract. Such request will be made by an exchange of letter(s) with the State. If the State determines that the requested additional work or plan changes are necessary or desirable and can be accommodated without undue disruption to the Project, the State will cause the additional work or plan changes to be made.

- 2.4. **Satisfactory Completion of Contract.** The State will perform all other acts and functions necessary to cause the construction contract to be completed in a satisfactory manner.
- 2.5. **Replacement of Castings.** Adjustments to certain County-owned facilities, including but not limited to, valve boxes and frame and ring castings, may be performed by the State's contractor under the construction contract. The County will furnish the contractor with new units and/or parts for those in place County-owned facilities when replacements are required and not covered by a contract pay item, without cost or expense to the State or the contractor, except for replacement of units and/or parts broken or damaged by the contractor.

3. Maintenance by the County

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

- 3.1. **Roadways.** Maintenance and ownership of County Road (CR) No. 54 and No. 56. Maintenance includes, but is not limited to, snow, ice, and debris removal, resurfacing, seal coating, and any other maintenance activities according to accepted County maintenance practices.
- 3.2. **Additional Drainage.** No party to this Agreement will drain any additional drainage volume into the storm sewer facilities constructed under the construction contract that was not included in the drainage for which the storm sewer facilities were designed, without first obtaining written permission to do so from the other party.

4. Basis of County Cost

- 4.1. **Schedule "I".** The Preliminary Schedule "I" includes all anticipated County participation construction items and the construction engineering cost share covered under this Agreement and is based on engineer's estimated unit prices.
- 4.2. **County Participation Construction.** The County will participate in the following at the percentages indicated.
 - A. 50 Percent will be the County's rate of cost participation in all of the grading, paving, and seeding construction. The construction includes, but is not limited to, those construction items tabulated on Sheet No. 2 of the Preliminary Schedule "I".
- 4.3. **Construction Engineering Costs.** The County will pay a construction engineering charge equal to 8 percent of the total County participation construction covered under this Agreement.
- 4.4. **Plan Changes, Additional Construction, Etc.** The County will share in the costs of construction contract addenda and change orders that are necessary to complete the County participation construction covered under this Agreement, including any County requested additional work and plan changes.

The State reserves the right to invoice the County for the cost of any additional County requested work and plan changes, construction contract addenda, change orders, and associated construction engineering before the completion of the contract construction.
- 4.5. **Liquidated Damages.** All liquidated damages assessed the State'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.

5. County Cost and Payment by the County

- 5.1. County Cost.** \$70,557.27 is the County's estimated share of the costs of the contract construction and the 8 percent construction engineering cost share as shown in the Preliminary Schedule "I". The Preliminary Schedule "I" was prepared using estimated quantities and unit prices and may include any credits or lump sum costs. Upon award of the construction contract, the State will prepare a Revised Schedule "I" based on construction contract unit prices, which will replace and supersede the Preliminary Schedule "I" as part of this Agreement.
- 5.2. Conditions of Payment.** The County will pay the State the County's total estimated construction and construction engineering cost share, as shown in the Revised Schedule "I", after the following conditions have been met:
- A.** Execution of this Agreement and transmittal to the County, including a copy of the Revised Schedule "I".
 - B.** The County's receipt of a written request from the State for the advancement of funds according to the following Payment Schedule.

Payment Schedule

1st Payment = 100 Percent of anticipated County costs on or before May 1, 2023.

- 5.3. Acceptance of the County's Cost and Completed Construction.** The computation by the State of the amount due from the County will be final, binding, and conclusive. Acceptance by the State of the completed contract construction will be final, binding, and conclusive upon the County as to the satisfactory completion of the contract construction.
- 5.4. Final Payment by the County.** Upon completion of all contract construction and upon computation of the final amount due the State's contractor, the State will prepare a Final Schedule "I" and submit a copy to the County. The Final Schedule "I" will be based on final quantities and include all County participation construction items and the construction engineering cost share covered under this Agreement. If the final cost of the County participation construction exceeds the amount of funds advanced by the County, the County will pay the difference to the State without interest. If the final cost of the County participation construction is less than the amount of funds advanced by the County, the State will refund the difference to the County without interest.

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

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 County's Authorized Representative will be:

Name, Title: John Welle, County Engineer (or successor)
Address: 1211 Airpark Drive, Aitkin, MN 56431
Telephone: (218) 927-7469
E-Mail: john.welle@co.aitkin.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 County. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

8. Liability; Worker Compensation Claims

- 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 County.
- 8.2. Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

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. State Audits

Under Minnesota Statutes § 16C.05, subdivision 5, the County'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.

11. Government Data Practices

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

12. 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.

13. Termination; Suspension

13.1. *By Mutual Agreement.* This Agreement may be terminated by mutual agreement of the parties.

13.2. *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 performance of contract construction under the Project. Termination must be by written or fax notice to the County.

13.3. *Suspension.* In the event of a total or partial government shutdown, the State may suspend this Agreement and all work, activities and performance of work authorized through this Agreement.

14. 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.

[The remainder of this page has been intentionally left blank]

AITKIN COUNTY

The undersigned certify that they have lawfully executed this contract on behalf of the Governmental Unit as required by applicable charter provisions, resolutions, or ordinances.

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

DEPARTMENT OF TRANSPORTATION

Recommended for Approval:

By: _____
(District Engineer)

Date: _____

Approved:

By: _____
(State Design Engineer)

Date: _____

COMMISSIONER OF ADMINISTRATION

By: _____
(With Delegated Authority)

Date: _____

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

PRELIMINARY SCHEDULE "I"

Agreement No. 1049576

Aitkin County

SP 0119-30 (TH 210=002)

SP 0116-49 (TH 169=035)

Fed. Proj. CRRSAA 0122(152)

Preliminary: March 22, 2022

Grading, Bit, surfacing, unbonded concrete overlay, lighting, ADA improvements, Box Culvert and Bridge No. 01006 & No. 01004 construction to start approximately July 1, 2023 under State Contract No. ____ with ____ located on Trunk Highway No. 210 from the Ripple River to the Trunk Highway No. 169 north Junction located on Trunk Highway No. 169 from the north Junction of Trunk Highway No. 210 to the Mississippi River

COUNTY COST PARTICIPATION

Work Items From Sheet No. 2	65,330.81
Construction Engineering (8%)	5,226.46
(1) Total County Cost	\$70,557.27

(1) Amount of advance payment as described in Article 5 of the Agreement (estimated amount)

By Commissioner: xx

20220510-xxx

Cooperative Construction Agreement

Whereas, Aitkin County has requested improvements to the intersection of Aitkin County Road 54/56 and US Highway 169/TH 210 as part of State Project No. 0119-30 (TH 210=002) and State Project No. 0116-49 (TH 69=035), and

Whereas, MnDOT has agreed to include requested intersection improvements through a Cooperative Construction Agreement with the 50% of the costs of the improvements being paid by Aitkin County.

Therefore, Be it Resolved that Aitkin County enter into MnDOT Agreement No. 1049576 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for payment by the County to the State of the County's share of the cost of the grading, paving, and seeding construction and other associated construction to be performed upon, along, and adjacent of Trunk Highway 210 from Ripple River to the Truck Highway No. 169 north junction under State Project NO. 0019-30 210=002.

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 10th day of May 2022, and that the same is a true and correct copy of the whole thereof.

Witness my hand and seal this 10th day of May 2022

Jessica Seibert
County Administrator