



Board of County Commissioners Agenda Request

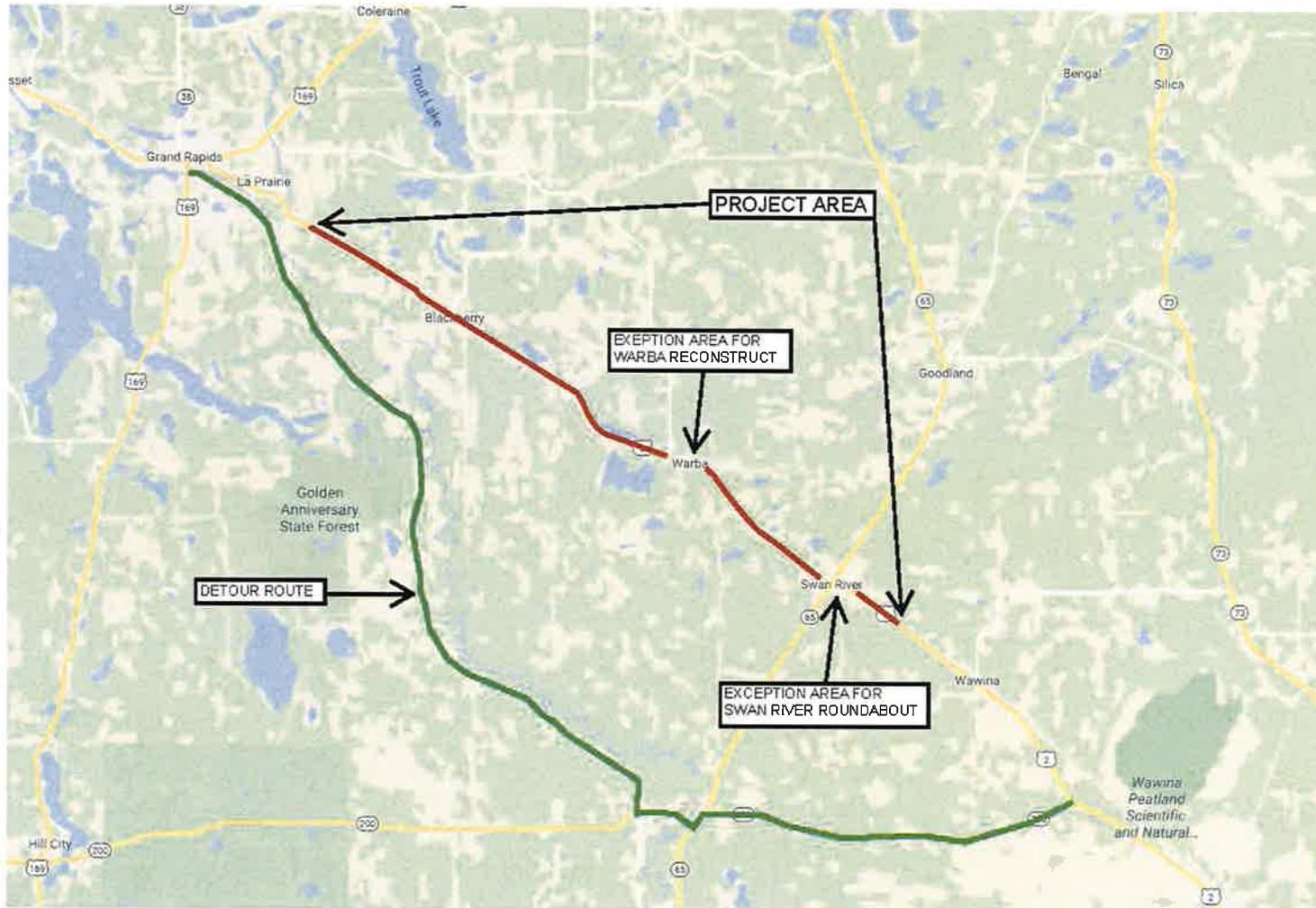
5B
Agenda Item #

Requested Meeting Date: 2-9-21

Title of Item: Trunk Highway 2 Detour Agreement

| | | |
|---|--|---|
| <input checked="" type="checkbox"/> REGULAR AGENDA <input type="checkbox"/> CONSENT AGENDA <input type="checkbox"/> INFORMATION ONLY | Action Requested: <input type="checkbox"/> Approve/Deny Motion <input checked="" type="checkbox"/> Adopt Resolution (attach draft) <small>*provide copy of hearing notice that was published</small> | <input type="checkbox"/> Direction Requested <input type="checkbox"/> Discussion Item <input type="checkbox"/> Hold Public Hearing* |
| Submitted by: John Welle | | Department: Highway Department |
| Presenter (Name and Title): John Welle, Aitkin County Engineer | | Estimated Time Needed: 5 minutes |
| Summary of Issue: <p>MnDOT will be performing grading/bituminous resurfacing work on TH 2 between Wawina and Grand Rapids during the 2021 construction season. Construction is expected to take up to 120 days and will take place between the months of May and October. 2.5 miles of Aitkin County Highway 10 is part of the planned project detour as shown on attached map.</p> <p>To allow MnDOT to pay the estimated \$10,590.10 for use of County Highway 10 as part of this detour, they have provided the attached agreement and the following resolution.</p> | | |
| Alternatives, Options, Effects on Others/Comments: | | |
| Recommended Action/Motion: Approve attached resolution. | | |
| Financial Impact: Is there a cost associated with this request? <input type="checkbox"/> Yes <input type="checkbox"/> No What is the total cost, with tax and shipping? \$ Is this budgeted? <input type="checkbox"/> Yes <input type="checkbox"/> No Please Explain: | | |

SP 3104-60 2021 Reclaim and Overlay Project



**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
And
AITKIN COUNTY
DETOUR AGREEMENT
For Trunk Highway No. 2 Detour**

| | | |
|------------------------------|----------------|----------------------------|
| State Project Number (S.P.): | <u>3104-60</u> | Original Amount Encumbered |
| State Project Number (S.P.): | <u>3105-16</u> | <u>\$10,590.10</u> |
| Trunk Highway Number (T.H.): | <u>2=008</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 is about to perform grading, bituminous milling, bituminous reclamation, and bituminous surfacing construction upon, along, and adjacent to Trunk Highway No.2 from 0.4 miles east of Bridge #31032 over Prairie River to 1.97 miles east of Trunk Highway No. 65, except the limits of the City of Warba under State Project No. 3104-60 (T.H. 2=008); and
2. The State requires a detour to carry T.H. 2 traffic on County State Aid Highway No. 10 during the construction; and
3. The County is willing to maintain the T.H. 2 detour; and
4. The State is willing to reimburse the County for the road life consumed by the detour and detour maintenance as hereinafter set forth; and
5. Minnesota Statutes § 471.59, subdivision 10, § 161.25, and § 161.20, subdivision 2(b), authorize the parties to enter into this Agreement.

Agreement

1. Term of Agreement;

- 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 the State removes all detour signs, returns the temporary Trunk Highway detour to the County, and pays for the detour compensation.

2. Agreement Between the Parties

2.1. Detour.

- A. **Location(s).** The State will establish the T.H. 2 detour route on the following County road(s) as detailed in the project plans or Special Provisions:
County State Aid Highway (C.S.A.H.) No. 10 for a total distance of 2.2 miles.
- B. **Modification of the Detour Route.** The State may modify the detour route or may add additional roadways to the official detour during construction. The State will request concurrence from the

County for changes to the detour route. If such change increases the State's total payment amount over the maximum obligation in Article 3.2, the Agreement will be amended.

- A. **Axle Loads and Over-Dimension Loads.** The County will permit 10-ton axle loads on the detour route. Over-dimension loads will be allowed by MnDOT permit.
- B. **Traffic Control Devices.** The State may install, maintain, and remove any traffic control devices it considers necessary to properly control the detoured traffic. The State may paint roadway markings, such as the centerline, edge lines, and necessary messages.
- C. **Duration.** The State will provide the County with advance notice identifying the dates the State intends to place and remove the detour signing.

2.2. **Maintenance.**

- A. The County will maintain the portion of the detour that is on City streets/County roads, and furnish all necessary labor and materials, to the satisfaction of the State's District Maintenance Engineer at Duluth.
- B. **County's Failure to Adequately Maintain.** If the County fails to adequately maintain the detour as provided in Section 2.2.A. of this Agreement, of which failure the State will be the sole judge, the State may perform such work or cause it to be performed, as the State's District Maintenance Engineer considers necessary, to properly and adequately maintain the T.H. 2 detour. The State may retain the cost of such maintenance from any moneys then due, or thereafter becoming due, to the County under this Agreement. This paragraph will not be construed to relinquish any rights of action that may accrue on behalf of the State against the County for any breach of agreement.

2.3. **Basis of State Cost.**

- A. **Road Life Consumed.** The State will reimburse the County for the road life consumed by the detour using the following methods, as set forth in the Detour Management Study Final Report dated January 1991, and updated by MnDOT's Policy on Cost Participation for Cooperative Construction Projects and Maintenance Responsibilities between MnDOT and Local Units of Government.
 - i. The "Gas Tax Method" formula, multiplies the Combined Tax Factor per mile times the Average Daily Traffic ("ADT") count of vehicles diverted from the Trunk Highway times the county road length in miles times the duration of the detour in days to determine the State's cost for the road life consumed by the detour. If an ADT changes, the parties will amend the Agreement.
 - ii. The County may, at its option, perform an "Equivalent Overlay Method" analysis. A State-approved firm, at no cost or expense to the State, must perform the testing and analysis. The County will keep records and accounts to verify any claim it might bring against the State for additional costs using the "Equivalent Overlay Method".
- B. **Maintenance Costs.** The State's detour maintenance cost will be equal to the amount computed by using the "Gas Tax Method" formula under Section 2.3.A.

3. **Payment**

The State's payment consists of the sum of the road life consumed and maintenance amounts.

- 3.1. **For Road Life Consumed.** The State's total payment for the road life consumed by the detour is equal to the amount computed by using the "Gas Tax Method" formula plus any amount determined by using the "Equivalent Overlay Method" analysis that is in excess of twice the "Gas Tax Method" amount.

The State's estimated cost for the road life consumed by the detour is based on the data below:

| <u>Tax Factor</u> | <u>ADT</u> | <u>Road Length (Miles)</u> | <u>Duration (Days)</u> | <u>Cost</u> |
|----------------------------|------------|--------------------------------|------------------------|-------------------|
| 0.00513 | 4010 | 2.2 | 117 | \$5,295.05 |
| Road Life Consumed Amount: | | | | <u>\$5,295.05</u> |

- 3.2. For Maintenance.** \$5,295.05 is the State's estimated cost for detour maintenance based on the "Gas Tax Method" amount.

The State may retain the cost of State performed detour maintenance, as provided for in Section 2.2 of this Agreement, from any moneys then due, or thereafter becoming due, to the County under this Agreement.

3.3. Total Payment and Maximum Obligation.

- A.** \$10,590.10 is the State's estimated payment for road life consumed (\$5,295.05) and maintenance (\$5,295.05).
- B.** \$16,000 is the maximum obligation of the State under this Agreement and must not be exceeded unless the maximum obligation is increased by execution of an amendment to this Agreement.
- 3.4. Conditions of Payment.** The State will pay the County the State's total road life consumed and maintenance payment amount after performing the following conditions.
- A.** Execution of this Agreement and the County's receipt of the executed Agreement.
- B.** State's encumbrance of the State's total payment amount.
- C.** State's removal of all detour signs.
- D.** State notifies the County of the removal of the detour signs, and the number of days the detour was in effect.
- E.** State's receipt of a written request from the County for payment.

4. Release of Road Restoration Obligations

By accepting the State's road life consumed and maintenance payment plan and total payment amount, the County releases the State of its obligation, under Minnesota Statutes § 161.25, to restore the County roads used as a T.H. 2 detour to as good condition as they were before designation as temporary trunk highways.

5. 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.

5.1. The State's Authorized Representative will be:

Name, Title: Morris Luke, Assistant District Traffic Engineer (or successor)
 Address: 1123 Mesaba Ave., Duluth, MN 55811
 Telephone: (218) 725-2778
 E-Mail: morris.luke@state.mn.us

5.2. The County's Authorized Representative will be:

Name, Title: John Welle, Aitkin County Engineer
Address: 1211 Airpark Drive, Aitkin, MN 56431
Telephone: 218-927-7469
E-Mail: john.welle@co.aitkin.mn.us

6. **Assignment; Amendments, Waiver; Contract Complete**

- 6.1. **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.
- 6.2. **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.
- 6.3. **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.
- 6.4. **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.

7. **Liability**

The County and State will be responsible for their own acts and omissions, to the extent authorized by law. Minnesota Statutes § 3.736 governs the State's liability. Minnesota Statutes, Chapter 466 governs the liability of the County.

8. **State Audits**

Under Minnesota Statutes § 16C.05, subdivision 5, the County's books, records, documents, and 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.

9. **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 by the State 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.

10. **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.

11. **Termination; Suspension**

- 11.1. **By Mutual Agreement.** This Agreement may be terminated by mutual agreement of the parties or by the State for insufficient funding as described below.
- 11.2. **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 County. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the County 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.

11.3. 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.

12. 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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STATE ENCUMBRANCE VERIFICATION

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

Signed: _____

Date: _____

SWIFT Purchase Order: 3000571574

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

Approved:

Digitally signed by Duane Hill
Date: 2021.01.20 12:50:52

By: _____
(District Engineer)

Date: _____

COMMISSIONER OF ADMINISTRATION

By: _____
(With Delegated Authority)

Date: _____

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

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

ADOPTED February 9, 2021

By Commissioner: xxxx

20210209-xxx

Trunk Highway 2 Detour Agreement

BE IT RESOLVED, that Aitkin County enter into MnDOT Agreement No. 1045890 with the State of Minnesota, Department of Transportation for the following purposes:

To provide for payment by the State to the County for the use and maintenance of County State-Aid Highway No. 10 as a detour route during the construction to be performed upon, along and adjacent to Trunk Highway No. 2 from 0.4 miles east of Bridge #31032 over the Prairie River to 1.97 miles east of Trunk Highway 65, except the limits of the City of Warba, under State Project No. 3104-60 (T.H. 2=008).

BE IT FURTHER RESOLVED, that the Aitkin County Engineer is hereby authorized to execute the Agreement and any amendments to the Agreement.

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

FIVE MEMBERS PRESENT

All Members Voting

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 9th day of February, 2021 and that the same is a true and correct copy of the whole thereof.

Witness my hand and seal this 9th day of February, 2021

Jessica Seibert
County Administrator