

**City of Menahga
Action Memorandum 18-023**

Subject: Authorize the Road Use Agreement with Enbridge Energy

Agenda of: April 9, 2018

Council action: _____

Summary statement: Action Memorandum 18-023 authorizes the Road Use Agreement with Enbridge Energy. Enbridge Energy requests the use of Main St E as a haul road during pipeline construction in the Menahga area.

The agreement permits "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 road 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".

Fiscal information:

Total amount of funds listed in this legislation: \$ 0

This legislation (✓):

Has no fiscal impact Creates a positive impact in the amount of: \$ _____
 Creates a negative impact in the amount of: \$ _____

Funds are (✓):

Budgeted Line item(s): _____
 Not budgeted Affected line item(s): _____

ROAD USE AGREEMENT

THIS ROAD USE AGREEMENT (this “Agreement”) is made this __ day of _____, 2018 (“Effective Date”), by and between City of Menahga, County of Wadena, State of Minnesota, by Frank Thelin, Public Works Director, and Enbridge Energy, Limited Partnership, a Delaware limited partnership, with an office located at 119 N 25th 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/Town/Township; and

WHEREAS, Enbridge wishes to use County/Town/Township 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/Town/Township 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/Town/Township 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 Frank Thelin, Public Works Director 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.** County/Town/Township shall issue master overweight and oversize permits for Roads in a timely manner to Enbridge upon the filing of such applications on behalf of Enbridge and concurrent with any applicable Minnesota Department of Transportation OS/OW Permit(s).

5. **Emergency Repairs.** Notwithstanding the foregoing, in the event Enbridge is reasonably believed by County/Town/Township to have caused damage to Roads of a magnitude sufficiently great to create a hazard to the motoring public, which in County/Town/Township's reasonable opinion warrants an immediate repair or road closing, County/Town/Township 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/Town/Township 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/Town/Township 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/Town/Township will reimburse Enbridge for amounts paid to fund the repair, if any.

6. Post Project. Enbridge and County/Town/Township 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/Town/Township to restore Roads as it sees fit; or
 - ii. Road restoration services shall be performed or contracted by Enbridge on behalf of County/Town/Township in order to restore Roads.
- B. Upon Enbridge's request, County/Town/Township 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/Town/Township's receipt of compensation under 6(A)(i) or 6(A)(ii) above, County/Town/Township 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/Town/Township for all reasonable damages incurred by the County/Town/Township caused by Enbridge's use of the Roads.

8. Dispute Resolution. If Enbridge and County/Town/Township] 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/Town/Township, 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/Town/Township. Enbridge and County/Town/Township 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.

City of Menahga

By: _____

Print: _____

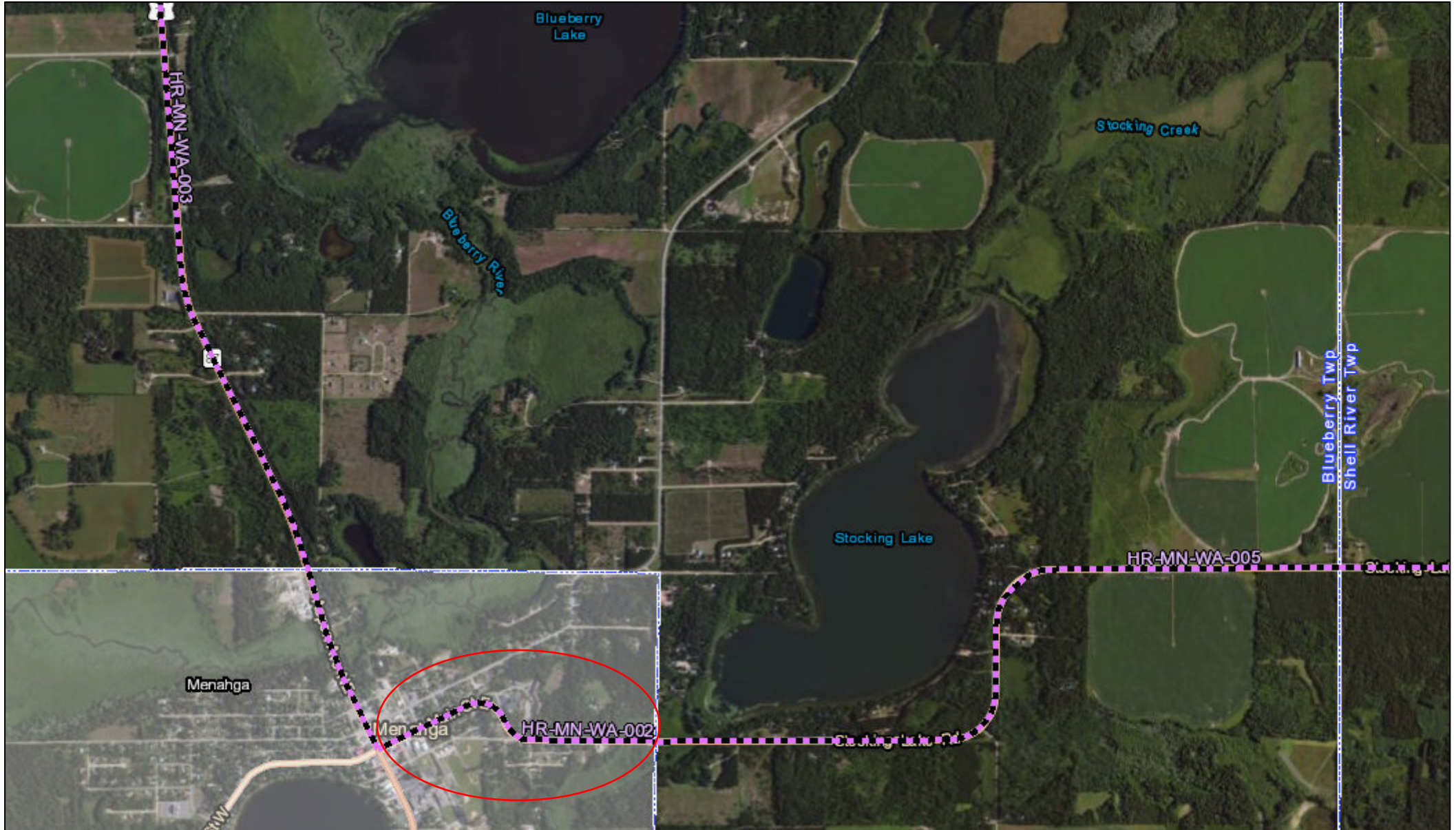
Title: _____

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

By: _____

John McKay, Authorized Agent

HR-MN-WA-002-Haul Road Map for City of Menahga Main Street E Asphalt Road .91 Miles



February 28, 2018

EXHIBIT A

