



# Board of County Commissioners Agenda Request

**4A**  
Agenda Item #

**Requested Meeting Date:** 6-8-21

**Title of Item:** CH 5 Alignment Options - BNSF Agreement

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

<b>Submitted by:</b> John Welle	<b>Department:</b> Highway Department
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<b>Presenter (Name and Title):</b> John Welle, Aitkin County Engineer	<b>Estimated Time Needed:</b> 20 minutes
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**Summary of Issue:**  
The 4.7 mile segment of County Highway 5 from County Highway 53 south of Kimberly to TH 210 is scheduled for reconstruction in the 2024 Capital Road Improvement Program. As part of this project, alignment alternatives are being considered in two different areas of the project.

The first area is in the vicinity of the Burlington Northern Railroad track in Kimberly as shown on Map 1. Option 1 is a 30 mile per hour (mph) alignment that crosses the BNSF railroad track near it's existing location. Option 2 is a 50 mph alignment that creates a new crossing of the BNSF railroad track and a new Rice River Bridge crossing. As we continue to study these options, BNSF has informed us that we need to enter into the attached preliminary engineering services agreement to allow them to analyze these options. With our preference and focus being on option 1, the focus of their analysis would likewise be option 1.

The second area where alignment alternatives are being considered is shown on Map 2. In the past, we have heard from residents that we should consider rerouting County Highway 5 on the 275th Avenue corridor as shown by option 2 on Map 2 to serve the more populated area surrounding 275th Avenue. 275th Avenue currently is a Kimberly and Jevne Township road. After discussing this alternative with the board of supervisors from Kimberly, Jevne, and Fleming townships, we are no longer considering this as a viable option due to various concerns with the intersection at TH 210 under this option. Our preference therefore is to realign CH 5 as shown by option 1 on Map 2.

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

**Recommended Action/Motion:**

- 1) Motion to enter into proposed BNSF preliminary engineering services agreement to continue the study of alignment options shown on Map 1.
- 2) Consensus for alignment option 1 on Map 2 as the preferred alignment through this area.

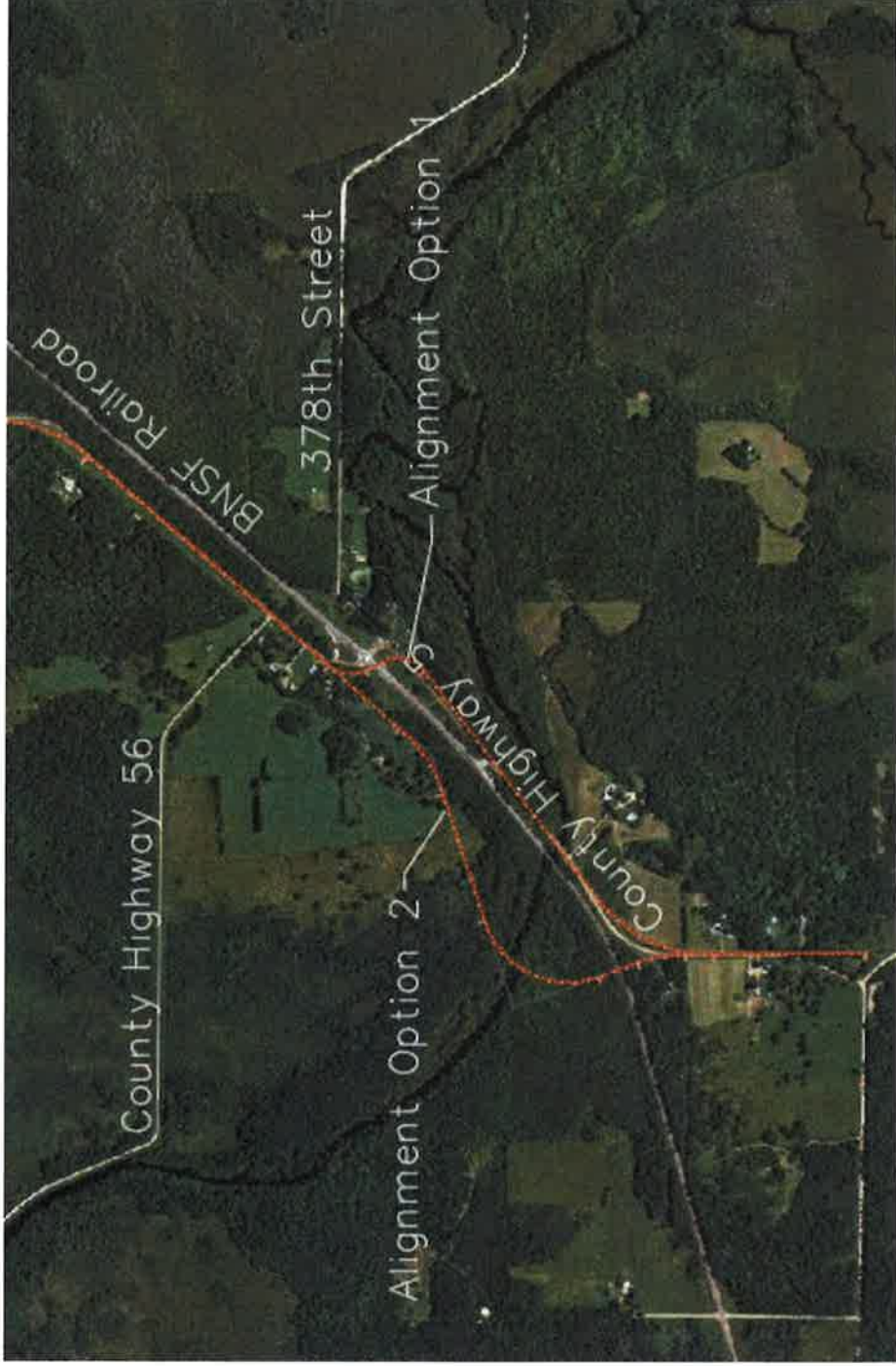
**Financial Impact:**

Is there a cost associated with this request?  Yes  No

What is the total cost, with tax and shipping? \$ 15,252

Is this budgeted?  Yes  No *Please Explain:*

**Map 1**



# Map 2



**PRELIMINARY ENGINEERING SERVICES AGREEMENT**

**BNSF File No.: BF10018102  
Mile Post 79.657  
Line Segment 27  
U.S. DOT Number 076238S  
Brainerd Subdivision**

This Agreement ("**Agreement**"), is executed to be effective as of \_\_\_\_\_ ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**") and Aitkin County, a political subdivision of the State of Minnesota ("**Agency**").

**RECITALS**

WHEREAS, BNSF owns and operates a line of railroad in and through Aitkin County , State of Minnesota;

WHEREAS, Agency has stated its intention to proceed initially with a project to realign a portion of County State Aid Highway 5 and relocate the existing railroad crossing located in Kimberly, MN (**the "Project"**);

WHEREAS, Agency has requested that BNSF perform certain engineering services with respect to its railroad facilities located at or near the Project site to facilitate Agency's evaluation of the feasibility of proceeding with the Project (**the "Work"**);

WHEREAS, BNSF is agreeable to performing the Work, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Scope of Work.**

As used herein, the term "**Work**" includes all work performed by BNSF pursuant to this Agreement, whether performed by BNSF employees or by BNSF's contractors, consultants or other agents, including, but not necessarily limited to, on-site visits, preliminary engineering services, developing cost estimates for construction of the Project, and reviewing and/or providing comments on preliminary layouts or other designs, plans, and/or documents in connection with the Project.



## **2. Payment for Work.**

Agency authorizes BNSF to proceed with the Work relating to the Project. Agency shall pay and reimburse BNSF for all actual costs and expenses that BNSF incurs in performing the Work, including but not limited to, labor, supplies, and material; direct and indirect labor or contractor additives; delivery charges; and BNSF additives and overhead, as such are in effect on the date BNSF prepares the final bill; and taxes, such as applicable sales and use taxes, business and occupation taxes, and similar taxes. BNSF estimates the cost for Work on this Project to be Fifteen Thousand Two Hundred Fifty-Two dollars (\$15,252.00), but said estimate shall not be a limitation on the Work to be performed or costs and expenses which Agency shall reimburse to BNSF in full.

During its performance of the Work pursuant to this Agreement, BNSF will send Agency progressive invoices detailing the costs of the Work performed by BNSF. Agency must reimburse BNSF for completed work within thirty (30) days of the date of the invoice for such work. Upon completion of the Work, BNSF will send Agency a detailed invoice of final costs. Agency must pay the final invoice within ninety (90) days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Agency under this section.

## **3. Scope of Agreement**

The Parties acknowledge that by entering into this Agreement, neither BNSF nor Agency are obligated to authorize or participate in the construction of the Project. If Agency seeks to proceed with development of the Project after the Work is performed, the Project will be subject to further review and approval by BNSF in BNSF's sole discretion. BNSF and Agency shall be required to enter into negotiations for construction of the Project and other activities on terms acceptable to BNSF.

Notwithstanding anything to the contrary in this Agreement, BNSF's review, approval, and/or other participation in the Project or any element thereof, including the Work performed by BNSF or its contractors hereunder, is expressly limited, and intended and understood by the parties to be in furtherance of BNSF's railroad purposes, and not in furtherance of Agency's purposes in undertaking the Project. All of the Work performed hereunder is intended for use in the evaluation of the impact of the Project on BNSF's railroad and the costs to Agency associated therewith. The Work is provided in consideration of the subjective standards of BNSF for its railroad purposes only, and shall in no way be construed or deemed to be a condition or direction to Agency, or an opinion

or approval that the plans and specifications or any work intended or completed on the Project is appropriate for any other purpose including highway purposes, is structurally sound, or that such plans, specifications, or intended or completed work meet applicable standards, regulations, laws, statutes, local ordinances, and/or building codes. No benefits to Agency or any third party are provided, intended or implied herein. Agency shall at all times be solely responsible for the adequacy and compliance of all design elements of the Project for highway and other public purposes, and shall waive and release BNSF for any and all claims which may or could result from the Work performed hereunder, and if applicable to the fullest extent permitted by law, indemnity and hold BNSF harmless for the same.

**4. Disclaimer**

BNSF GIVES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY, QUALITY, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY OTHER MATTER, OF THE WORK PERFORMED PURSUANT TO THIS AGREEMENT OR ANY REPORT OR OTHER DELIVERABLE WHICH BNSF MAY FURNISH TO AGENCY PURSUANT TO THIS AGREEMENT. BNSF SHALL BE IN NO WAY RESPONSIBLE FOR THE PROPER RELIANCE UPON, INTERPRETATION OF, OR OTHER USE OF THE WORK BY AGENCY.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

**Aitkin County**

**BNSF Railway Company**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Accepted and effective this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.