



Board of County Commissioners Agenda Request

4B

Agenda Item #

Requested Meeting Date: 4-28-26

Title of Item: MnDOT Agreement No. 1058074

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

As part of the County Highway 5 reconstruction project through the Kimberly area, a new traffic signal and gate will be needed for the new crossing, which will be constructed at a 15-degree skew to the railroad. The MnDOT Rail Office has drafted Agreement No. 1058074 to outline the responsibilities of Aitkin County, MnDOT, and BNSF Railroad for construction of this signal/gate system. The total cost of the system is estimated at \$798,079, with Aitkin County's 50% share of that cost being \$399,039.50.

The County Attorney has reviewed this agreement and has found it to be appropriate as to form and content.

Alternatives, Options, Effects on Others/Comments:

Recommended Action/Motion:
Approve attached resolution.

Financial Impact:

Is there a cost associated with this request? Yes No

What is the total cost, with tax and shipping? \$ 399,039.50

Is this budgeted? Yes No *Please Explain:*

\$6,500,000 was budgeted in 2026 for the County Highway 5 Reconstruction project.

STATE OF MINNESOTA
RAILROAD CROSSING SIGNAL AGREEMENT

USDOT Number:	982816T (Replacing 076238S)	Total Obligation:	\$ 798,079.00
State Project Number (SP):	01-00112	Anticipated Federal Aid:	\$ 5,000.00
Federal Project Number:	RRS 0126(191)	Total State Obligation:	\$ 394,039.50
CFDA:	20.205	Total Local Agency Obligation:	\$ 399,039.50
		Total Railroad Obligation:	\$ 0.00
Railroad:	BNSF Railway Company		
Location:	CSAH 5 (Nature Avenue), Kimberly Township, Aitkin County, MN		
Local Agency:	Aitkin County		

This Agreement is made and entered into by and between the State of Minnesota through its Commissioner of Transportation, (“State”), the BNSF Railway Company, (“Company”), and Aitkin County, (“Local Agency”) (collectively, the “Parties”).

RECITALS

1. CSAH 5 (Nature Avenue), as now established, crosses the track of the Company at grade in Kimberly Township, Aitkin County, Minnesota. The location of the crossing and railway track are shown on the attached Exhibit A (“Crossing”).
2. The State, the Company, and the Local Agency, desire that the Crossing be provided with new railroad flashing light signals, gates, constant warning circuitry and LED lenses] (“Signal System”) and the Company is willing to install, maintain and operate such Signal System upon the terms and conditions set forth in this Agreement (“Project”).
3. The State, pursuant to Minnesota Statute §161.36, is authorized to cooperate with the United States government in contracting for the construction, improvement and maintenance of transportation in the State of Minnesota, financed in whole or in part by federal monies.
4. The Federal Highway Administration (“FHWA”), when acting in cooperation with the State of Minnesota, is authorized by Section 130 of Title 23 of the United States Code to make Federal Aid available for the purpose of eliminating hazards at railroad grade crossings within the State of Minnesota.
5. The State, pursuant to Minn. Stat. §219.26, has reviewed the proposed selection of warning devices for the Crossing and has determined that the proposed selection is appropriate for the Crossing.

Accordingly, the Parties agree as follows:

AGREEMENT

1. Term of Agreement; Survival of Terms; Incorporation of Exhibits

- 1.1. **Effective Date.** This Agreement will be effective on the date the State obtains all required signatures under Minn. Stat. §16C.05, subdivision 2. The Company must not begin work under this Agreement until it is fully executed and the Company has been notified in writing by the State’s Project Manager to begin the Project.
- 1.2. **Expiration Date.** This Agreement will expire four (4) years after it is fully executed, or when all obligations have been satisfactorily fulfilled, whichever occurs first. Work completed after the expiration of this Agreement will

not be paid for by the State or Local Agency; any work completed by the Company agrees to complete such work at its own risk and expense.

- 1.3. **Survival of Terms.** All terms 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, but not limited to the following terms: Future Responsibility; State Audits; Data Disclosure; Government Data Practices; and Governing Law, Jurisdiction and Venue.
- 1.4. **Exhibits.** Exhibit A: Location Print; Exhibit B: Detailed Cost Estimate; Exhibit C: Title VI Non-Discrimination Provisions; Exhibit D: Buy America Requirements, and Exhibit E: Local Agency Resolution are attached and incorporated into this Agreement.

2. Scope of Work

2.1. Performance of Project Work

- 2.1.1. The Company will furnish all materials for, and install, the Signal System on CSAH 5 (Nature Avenue) at the Crossing indicated on Exhibit A. The Company will place the Signal System in accordance with Part 8 of the Minnesota Manual on Uniform Traffic Control Devices ("MN MUTCD").
- 2.1.2. The Company will submit detailed plans and specifications for the Project to the State for its approval, prior to starting the Project.
- 2.1.3. The Company may subcontract any or all of the Project work under this Agreement, provided a market-based competitive procurement process is used.
 - (a) If the subcontracted work costs less than \$10,000.00, the Company will provide an invoice detailing the work performed by its subcontractor(s).
 - (b) If the subcontracted work costs \$10,000.00 or more, the Company will:
 - i. Obtain prior approval from the State;
 - ii. Enter into a written contract with the subcontractor; however, an existing, continuing contract under which the Company has the same kind of work regularly performed at the Company's cost may be considered to conform to the requirements of this Section if the State determines that the proposed costs are reasonable; and
 - iii. Provide a copy of the new or continuing contract under which the subcontracted Project work will be performed.

2.1.4. The Company will comply with Buy America requirements as set forth in Exhibit D.

2.2. Standards of Performance; Inspection

- 2.2.1. Applicable standards for railroad grade crossing construction consist of standards and regulations in AASHTO, AREMA, FHWA, MN MUTCD, Minn. Stat. §219 and Minn. Rules §8830. Should a conflict be identified in any of these standards or regulations, Minnesota statutes and rules will govern.
- 2.2.2. The Company will have the Signal System placed in service within eighteen (18) months after the date the Company is authorized to begin the Project. If the Company determines it is not possible to do so within this time frame, the Company will notify the State of the need for a time extension and indicate the reason for such extension.
- 2.2.3. The Company and Local Agency will permit the State to inspect and approve the Project during the regular working hours of the Company with prior notice.
- 2.2.4. The Company will notify the State in writing of the date the Signal System is in service. On or after that date, representatives of the State and the Company will conduct a joint inspection of the Project.
- 2.2.5. The State may refuse to approve any and all portions of the Project performed under this Agreement for failure to comply with applicable standards for work of this type. If the State fails to approve the Project,

the State may refuse to make any further payments until the Project is performed in accordance with acceptable standards for work of this type and approved by the State.

2.2.6. The Company will notify the State in writing of the date when the Project is completed.

2.3. Traffic Control

2.3.1. The Company will be responsible for all traffic control and schedule coordination with the Local Agency as may be required to complete the Project. Where work on or near the traveled roadway is necessary, proper traffic signs, channelizing devices, warning lights, and barricades will be erected to protect traffic, employees, and pedestrians. All traffic control devices and methods will conform to the Minnesota Field Manual on Temporary Traffic Control Zone Layouts, MN MUTCD, Minnesota Standard Sign Manual, as well as the provisions and requirements of the Local Agency.

2.3.2. The Company will provide 48 hours' notice to the Local Agency before placing any traffic control on the roadway.

2.3.3. The Company will coordinate with the Local Agency if there is a need for a road detour in connection with the Project prior to the date the Project is started.

2.3.4. The actual costs incurred by the Company for traffic control are eligible for reimbursement under the terms of this Agreement.

2.4. **Approach Work and Sidewalks.** The State will coordinate with the Local Agency for the completion of any modifications to roadways, sidewalks or bike trails that may be necessary to accommodate the Project, at no expense to the Company.

2.5. **Project Work Changes.** If the State, the Company, or the Local Agency determine that change(s) to the Project scope, as outlined in Section 2.1 above, are required, such change(s) will be authorized only by an amendment to this Agreement executed prior to performance of any such change(s).

3. Future Responsibility

3.1. **Maintenance.** The Company will maintain and operate the Signal System at its sole expense, upon completion of the Project; provided, however, that the Company's agreement herein to operate and maintain the Signal System will not hinder the Company's ability to benefit from, or otherwise take advantage of, federal, state, or other public funds that may become available to pay or contribute to the cost of the operation and maintenance of signal systems at highway-railroad grade crossings.

3.2. **Advance Signing and Pavement Markings.** After the Project is completed, the State will coordinate with the Local Agency to install, or have installed, appropriate advance warning signs, other supplemental signs and pavement markings as needed, and to remove signs that are no longer needed, in accordance with the MN MUTCD.

3.3. Future Modifications or Removal

3.3.1. The Signal System will be the property of the State and will not be removed unless there has been a determination by the State that the Signal System is no longer required at the Crossing. If it determines that the Signal System is to be removed, the Company will promptly remove the Signal System at its sole expense and notify the State of the removal date.

3.3.2. If future railway improvements necessitate a modification of the Signal System at the Crossing, the Company will bear the entire cost of such modification without contribution from the State or Local Agency.

3.3.3. If future highway improvements necessitate a modification of the Signal System at the Crossing, the Company will negotiate a separate agreement with the Local Agency to allocate costs of such modification between the Parties.

4. Billing and Payment

4.1. **Cost Estimate.** The State, the Company, and the Local Agency have agreed upon the following estimated cost for the Project to be completed by the Company or its subcontractor:

Estimated Signal System Cost	
State Funds (reimbursable with Federal Funds)	\$5,000.00
50% State Funds	\$394,039.50
<u>50% Local Agency Funds</u>	<u>\$399,039.50</u>
Total Estimated Cost	\$798,079.00

4.2. **Cost Sharing.** The Company will be responsible for sending invoices to each Party, as applicable, setting forth their respective proportional share of costs whenever such costs are incurred by the Company and/or submitted to the Company by its subcontractor(s) for reimbursement.

4.3. Reimbursement

4.3.1. The State and Local Agency will pay the Company only for such items of work and expense as are proper and eligible for payment, as provided in 23 Code of Federal Regulations ("23 CFR"), including, but not limited to, Parts 1, 140, 172 and 646. Only materials actually incorporated into the Project will be eligible for reimbursement. Actual costs include taxes, such as applicable sales and use taxes, gross receipts taxes, business and occupation taxes, and similar taxes. Payments will be made in accordance with the following:

- (a) The State will make payments in accordance with Minnesota Statutes §16A.124.
- (b) Invoices for labor and materials ("Partial Invoices") may be submitted on a periodic basis during the Project, but not more frequently than once per month. Valid Partial Invoices will be paid no later than thirty (30) days from the date they are received by the State's Office of Freight and Commercial Vehicle Operations.
- (c) Partial Invoices that are not approved due to disputed items will be returned to the Company with a request to justify the disputed items. Upon resolution of such dispute, the State will pay the Company within thirty (30) days of receiving a corrected invoice. The State may pay the undisputed portion of any disputed invoice.
- (d) Partial Invoices must be based on actual (not estimated) costs incurred. Partial Invoices need not be itemized, but the State must be able to substantiate claimed costs by checking the Company's records upon request.
- (e) Final invoices must be submitted within 120 days of completion of the Project. Invoices submitted after this date, but less than one (1) year after completion of the Project will not be paid unless good cause is shown for the delay in the invoice's submission. In accordance with 23 CFR 140.922, any final invoice received more than one (1) year after completion of the Project will not be paid.
- (f) The final invoice must be a detailed, itemized statement of all items of work performed by the Company or its subcontractors, and must be marked "Final Invoice".
- (g) The State will inspect and approve the Project prior to payment of the final invoice. After the State's inspection and approval, the final invoice will be audited by the State in accordance with the requirements of state and federal laws and regulations. The Company must keep accounts and records for the Project in such a way that they may be readily audited. If any amount previously paid to the Company is in excess of the actual cost determined by audit, the Company, upon notice from the State, must pay the difference to the State within thirty (30) days of such notice. Conversely, if any amount previously paid to the Company is less than the actual costs determined by audit, the State will pay the remaining actual costs due within thirty (30) days of such determination.

(h) All invoices will be addressed as follows:

MnDOT Office of Freight and Commercial Vehicle Operations
395 John Ireland Boulevard, M.S. 470
St. Paul, MN 55155-1899
Email: anthony.cenci@state.mn.us

- 4.4. **Overrun of Estimated Costs with No Work Changes.** If, at any time subsequent to the effective date of this Agreement and prior to completion of the Project, the Company's actual costs for the Project exceed the estimated cost ("Overrun Costs"), the Company will provide a written justification for such Overrun Costs with the next invoice it submits for the State's review and approval.
- 4.4.1. If the Overrun Costs are less than 20% of the estimated cost, the State will encumber the necessary additional funds upon completing its review and approval of the Company's justification statement.
- 4.4.2. If the Overrun Costs are equal to or greater than 20% of the estimated cost, the Parties will execute an amendment to this Agreement, and the State will encumber the necessary additional funds, upon the State's completion of its review and approval of the Company's justification statement. Any additional expenses incurred by the Company prior to receiving notice of the State's approval may not be reimbursed by State.
- 4.4.3. If the Company fails to provide a justification or justification-clarification statement for Overrun Costs within five (5) business days of the State's request for the same after its receipt of the Company's invoice, the Overrun Costs may not be reimbursed by the State.

5. Project Contacts

5.1. The State's Authorized Project Manager:

Name: Chad Nieman
Telephone: 612-322-8632
E-Mail: chad.nieman@state.mn.us

5.2. The Company's Authorized Project Representative:

Name: Alexis Jones
Telephone: 901-495-3778
E-Mail: Alexis.Jones@bnsf.com

5.3. The Local Agency's Authorized Project Representative:

Name: Paul Kazmerzak
Telephone: 218-670-0550
E-Mail: paul.kazmerzak@aitkincountymn.gov

6. General Terms

- 6.1. **Assignment of Receivables.** Any Party to this Agreement may assign any receivables due them under this Agreement; provided, however, such assignments will not relieve the assignor of any of its rights or obligations under this Agreement.
- 6.2. **Amendments, Waiver, Merger and Counterparts.** Any amendments to this Agreement must be in writing and executed by the same parties who executed the original Agreement, or their successors in office. Failure of a Party to enforce any provision of this Agreement will not constitute, or be construed as, a waiver of such provision or of the right to enforce such provision. This Agreement contains all prior negotiations and

agreements between the Parties. No other understandings, whether written or oral, regarding the subject matter of this Agreement will be deemed to exist or to bind any of the Parties. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same Agreement.

- 6.3. **State Audits.** Under Minn. Stat. §16C.05, subd. 5, the Company's and Local Agency's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six (6) years after an appropriate state official certifies the Company's completion of the Project required under this Agreement.
- 6.4. **Liability.** Each of the Parties is responsible for its own acts and omissions and the results thereof. The State's liability is governed by Minn. Stat. §3.736. The Local Agency's liability is governed by Minnesota Statutes Chapter 466.
- 6.5. **Data Disclosure.** Under Minnesota Statutes §270C.65, and other applicable law, the Company consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Company to file state tax returns and pay delinquent state tax liabilities, if any.
- 6.6. **Government Data Practices.** This Agreement is subject to the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 ("MGDPA").
 - 6.6.1. All data created, collected, received, stored, used, maintained or disseminated by the Company under this Agreement will be subject to the provisions of Minn. Stat. §13.05, subdivision 11 only to the extent that the Company is required to undertake state governmental functions in the performance of its duties and obligations under this Agreement. In such event, the remedies of Minn. Stat. §13.08 will apply to the Company's release of data governed by the MGDPA. If the Company receives a request to release any data governed by this Section, the Company will immediately notify the State. The State will give the Company instructions concerning the release of the data to the requesting party before the data is released.
 - 6.6.2. The State and Local Agency must comply with the MGDPA as it applies to all data provided by either party under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Local Agency under this Agreement. The civil remedies of Minnesota Statutes § 13.08 apply to the release of the data governed by the MGDPA by either the Local Agency or the State. If the Local Agency receives a request to release the data referred to in this Section, it must immediately notify and consult with State's Authorized Project Representative as to how the Local Agency should respond to the request. The Local Agency's response to the request will comply with applicable law.
- 6.7. **Workers' Compensation.** The Company certifies that it has the appropriate workers' compensation insurance coverage required by Minnesota law, or federal law if the Company is subject to federal law which preempts Minnesota law. The Company will require its subcontractors to present proof of coverage under the Minnesota Workers' Compensation Act. The Company's employees and agents will not be considered state employees. Any claims arising under workers' compensation laws, or any claims made by a third party as a consequence of the acts or omissions of the Company, its agents, employees or subcontractors, are in no way the responsibility of the State.
- 6.8. **Termination**
 - 6.8.1. 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 herein. Termination must be by written notice to the Company and the Local Agency. The State is not obligated to pay for any expenses or services that are incurred or provided after notice and effective date of termination.

- 6.8.2. The Company will be entitled to payment, however, 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. The State will provide the Company and Local Agency with notice of the lack of funding within a reasonable time of the State's receiving said notice.
- 6.9. **Nondiscrimination.** If the Company enters into an agreement with a subcontractor to perform all or any portion of the Project, the Company, for itself, its assigns, and successors in interest, agrees that it will not discriminate in its choice of subcontractors and will include all of the nondiscrimination provisions in this Agreement, as well as those set forth in Exhibit C, in its lower tier contracts.
- 6.10. **Disadvantaged Business Enterprises.** The disadvantaged business enterprise requirements of 49 CFR 26 apply to this Agreement. The Company will ensure that disadvantaged business enterprises, as defined in 49 CFR 26, have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds by complying with all requirements of 49 CFR 26. The Company must not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts under this Agreement. Failure to comply with these requirements will constitute a breach of this Agreement and may result in its termination by the State, and possible debarment of the Company from performing other contractual services with the Federal Department of Transportation.
- 6.11. **Governing Law, Jurisdiction and Venue.** Minnesota law, without regard to its choice-of-law provisions, governs this Agreement. Venue for all legal proceedings arising out of this Agreement, or its breach, will be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

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COMPANY

The Company certifies that the appropriate person(s) have executed this Agreement on behalf of the Company as required by applicable articles, bylaws or resolutions.

Signed: _____

Title: _____

Date: _____

LOCAL AGENCY

Local Agency certifies that the appropriate person(s) have executed this Agreement on behalf of the Local Agency as required by applicable articles, bylaws or resolutions.

Signed: _____

Title: _____

Date: _____

Signed: _____

Title: _____

Date: _____

STATE ENCUMBRANCE VERIFICATION

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

Signed:

Date:

SWIFT PO: _____

DEPARTMENT OF TRANSPORTATION, as delegated

Signed:

Date:

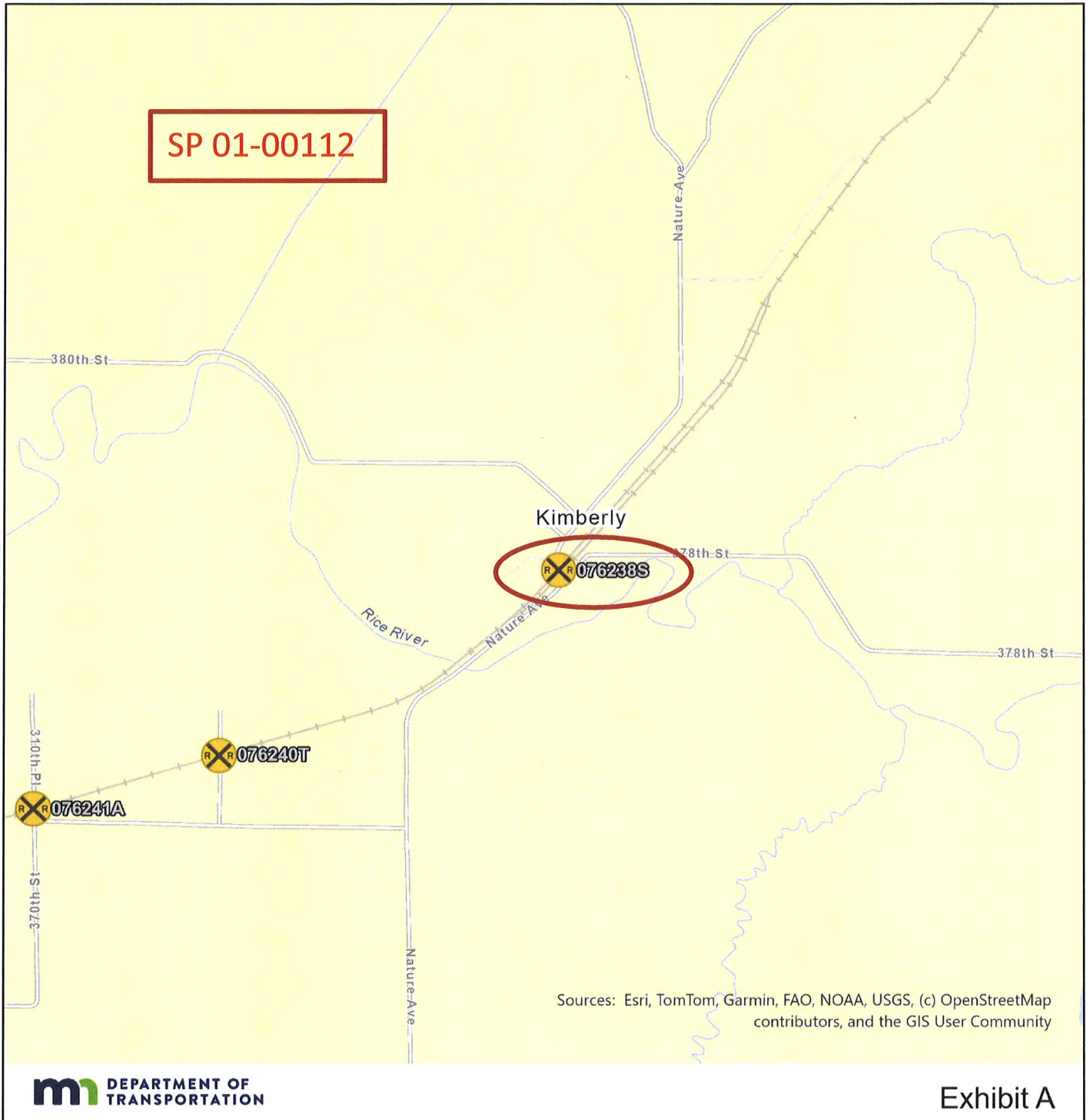
Title: Manager, Rail safety and Coordination Section

COMMISSIONER OF ADMINISTRATION, as delegated

Signed:

Date:

EXHIBIT A
LOCATION PRINT



ELECTRICAL MATERIAL	1.0 EA N	4,000	
EVENT RECORDER	1.0 EA N	5,615	
FIELD MATERIAL	1.0 LS N	7,647	
FILL DIRT	20.0 CY N	1,000	
FOUNDATION, GATE	2.0 EA N	2,074	
GATE KEEPER/ SAVER	2.0 EA N	2,712	
GATE MECHANISM, S-60 COMPLETE	2.0 EA N	12,187	
INDUCTOR, DUMMY LOAD	1.0 EA N	892	
LED LIGHT	8.0 EA N	1,778	
RELAY, DAX	2.0 EA N	2,806	
SHUNT, NBS	4.0 EA N	4,192	
SURFACE ROCK	10.0 CY N	1,000	
X REM HSE - ARRESTOR, MDSA-2 XS	1.0 EA N	828	
X REM HSE - BATTERY, VGL-350	18.0 EA N	7,162	
X REM HSE - BERM WALL	60.0 FT N	19,324	
X REM HSE - BUNGALOW 8X8 W/ AC	1.0 LS N	17,249	
X REM HSE - BUNGALOW MATERIAL	1.0 LS N	9,453	
X REM HSE - BUNGALOW, WIRE AND TEST	1.0 LS N	6,811	
X REM HSE - CABLE, 2C/6 TW	1250.0 FT N	2,563	
X REM HSE - CABLE, 3C/2	250.0 FT N	1,955	
X REM HSE - CABLE, 7C/14	2000.0 FT N	6,540	
X REM HSE - CHARGER, 12/80 (20/40/60)	1.0 EA N	1,982	
X REM HSE - CONSTANT WARNING, XP4, 2TK	1.0 EA N	30,015	
X REM HSE - CONVERTOR, 10-10	2.0 EA N	413	
X REM HSE - ELECTRICAL MATERIAL	1.0 EA N	4,000	
X REM HSE - FIELD MATERIAL	1.0 LS N	1,910	
X REM HSE - FILL DIRT	20.0 CY N	1,000	
X REM HSE - GENERATOR, ACG-3	1.0 EA N	348	
X REM HSE - INDUCTOR, DUMMY LOAD	1.0 EA N	892	
X REM HSE - RELAY, DAX	2.0 EA N	2,806	
X REM HSE - SHUNT, NBS	3.0 EA N	3,144	
X REM HSE - SURFACE ROCK	10.0 CY N	1,000	
USE TAX		22,412	
OFFLINE TRANSPORTATION		3,344	
		<hr/>	
TOTAL MATERIAL COST		292,797	292,797

OTHER			

AC POWER SERVICE	1.0 EA N	7,500	
CONTRACT ENGINEERING	1.0 LS N	12,000	
CONTRACT FLAGGING/ SIGNS/ CONES	1.0 LS N	12,000	
MACHINE RENTAL	1.0 LS N	8,000	
X REM HSE - AC POWER SERVICE	1.0 EA N	7,500	
		<hr/>	
TOTAL OTHER ITEMS COST		47,000	47,000
PROJECT SUBTOTAL			718,343
CONTINGENCIES			71,834
BILL PREPARATION FEE			7,902
			<hr/>
GROSS PROJECT COST			798,079
LESS COST PAID BY BNSF			0
			<hr/>
TOTAL BILLABLE COST			798,079

EXHIBIT C**Nondiscrimination Provisions of Title VI of the Civil Rights Act of 1964**

During the performance of this Agreement, the Company, for itself, its assignees and successors in interest (hereinafter referred to as the "Company"), agrees as follows:

1. **Compliance with Regulations:** The Company will comply with Regulations of the Department of Transportation relative to nondiscrimination in federally-assisted programs of the Federal Highway Administration (Title 49, Code of Federal Regulation, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.
2. **Nondiscrimination:** The Company, in completing the work and/or services contemplated by this Agreement, will not discriminate on the ground of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. When this Agreement includes a program or activities covered by Appendices A, B, or C of the Regulations, the Company will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including in its employment practices.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Company for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier will be notified by the Company of the Company's obligation under this Agreement and the Regulations relative to discrimination on the ground of race, color or national origin.
4. **Information and Reports:** The Company will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department of Transportation or the Federal Highway Administration to be pertinent to the ascertainment of the Company's compliance with such Regulations, orders and instructions. Where any information required of the Company is in the exclusive possession of another who fails or refuses to furnish this information, the Company will so certify to the Department of Transportation, or the Federal Highway Administration, as appropriate, and will detail what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the Company's noncompliance with the nondiscrimination provisions of this Agreement, the Department of Transportation will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:
 - a. Withholding of payments to the Company under this Agreement until the Company complies; and/or
 - b. Cancellation, termination or suspension of this Agreement, in whole or in part.
6. **Incorporation of Provisions:** The Company will include the provisions of Sections 1 through 5 of this Exhibit in every subcontract it enters into pursuant to this Agreement, including those for the procurement of materials and leasing of equipment, unless exempt by the Regulations, or any orders or instructions issued pursuant thereto. The Company will take any and all actions as the Department of Transportation or the Federal Highway Administration may direct regarding the Company's subcontracts as a means of enforcing such provisions, including sanctions for noncompliance. If the Company, however, becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Company may request that the State enter into such litigation to protect the State's interests, and/or that the United States enter into such litigation to protect the interests of the United States.

EXHIBIT D
Buy America

1. **Buy America.** The provisions of the Build America, Buy America Act, Public Law No.117-58 §§ 70901-70952, the Buy America law, 23 U.S.C. § 313, 2 CFR Part 184, and 23 CFR § 635.410 (“BABA Act”) are applicable to this Agreement. Any and all iron and steel materials (including miscellaneous items such as fasteners, nuts, bolts, and washers), construction materials, and manufactured products that: a) will be permanently incorporated into the project contemplated by this Agreement, and b) are funded at least partly with federal funds, must be produced in the United States.
2. **Iron and Steel.** In the case of iron and steel materials, “produced in the United States” means that all manufactured processes from the initial melting stage through the application of coatings, occur in the United States. “foreign source materials” are any domestic products taken out of the United States for any process (e.g., change of chemical content, permanent shape or size, or final finish of product).
 - 2.1. Raw materials such as iron ore, pig iron, processed, pelletized, and reduced iron ore, waste products (including scrap, iron or steel no longer useful in its present form from old automobiles, machinery, pipe, railroad rail, and steel trimmings from mills or product manufacturing), and other raw materials used in the production of iron or steel products may be imported from outside of the United States. Extracting, handling, or crushing raw materials that are inherent to the transporting of these materials for later use in the manufacturing process are exempt from the BABA Act.
3. **Construction Materials.** In the case of construction materials, “produced in the United States” means that all manufacturing processes for the construction materials occurred in the United States.
 - 3.1. “Construction materials” include any article, material, or supply that is, or consists primarily of: non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), fiber optic cable (including drop cable), optical fiber, lumber, engineered wood, or drywall.
 - 3.2. The BABA Act does not apply to: cement, cementitious materials, aggregates such as stone, sand, or gravel, aggregate binding agents or additives, or asphalt; also referred to as “Section 70917(c) Excluded Materials.”
4. **Manufactured Products.** In the case of manufactured products, “produced in the United States” means articles, materials, or supplies that have been processed into a specific form and shape, or combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. Mixtures of Section 70917(c) Excluded Materials delivered to a work site without final form for incorporation into the project contemplated by this Agreement are not a manufactured product.
 - 4.1. Components that are wholly or predominantly steel, iron, or both must satisfy the Federal Highway Administration’s existing requirement for domestic iron and steel. This includes precast concrete products and cabinets or other enclosures of intelligent transportation systems that incorporate steel or iron components.
 - 4.2. For work or services obligated on or after October 1, 2025: final assembly for all manufactured products incorporated into the project contemplated by this Agreement must take place in the United States.
 - 4.3. For work or services obligated on or after October 1, 2026: final assembly for all manufactured products incorporated into the project contemplated by this Agreement must take place in the United States; and the cost of components of products that are mined, produced, or manufactured in the United States must be greater than fifty-five percent (55%) of the total cost of all components of the manufactured product.

5. **Certificate of Compliance.** The Company is required to submit a Certificate of Compliance prior to incorporating any materials containing iron or steel, manufactured products, or construction materials into the project contemplated by this Agreement. This will be accomplished by the Company's submission of the appropriate Certificate of Compliance to the State when the materials are delivered to the work site. The Certifications of Compliance will certify that the materials are considered produced in the United States. The Certifications of Compliance for construction materials will certify that all manufacturing processes for the construction materials occurred in the United States. The Certifications for Compliance must be signed and dated by the Company's Authorized Representative, include a BABA Act submittal number, and the following statement: *"The materials herein referenced are produced in the United States and comply with the requirements of 23 CFR § 635.410, 2 CFR Part 184, Public Law No.117-58 §§ 70901-70952, and 23 U.S.C. § 313."*
6. **Documentation.** Supporting documentation to demonstrate compliance with the BABA Act (including without limitation mill test reports, manufacturer and supplier certifications, etc.) will be organized and maintained by the Company from the date of the materials' and/or products' delivery until six (6) years after completion of the project contemplated by this Agreement.
 - 6.1. The State may review the Company's supporting documentation to verify compliance with the BABA Act at any time upon request. The burden of proof of BABA Act compliance rests with the Company. If the supporting documentation does not demonstrate to the State that the iron, steel, manufactured products, and construction materials identified in the Certificates of Compliance were produced in the United States, then the iron, steel, manufactured products, or construction materials will be considered unauthorized and must be removed and replaced.

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EXHIBIT E
LOCAL AGENCY RESOLUTION

BE IT RESOLVED, that Aitkin County enter into an agreement with the BNSF Railway Company and the State of Minnesota through its Commissioner of Transportation for the installation and maintenance of railroad crossing signals at the intersection of CSAH 5 (Nature Avenue) with the tracks of the BNSF Railway Company.

BE IT FURTHER RESOLVED. that the Commissioner of Transportation is appointed agent for the Aitkin County to supervise said project and administer available federal funds in accordance with Minn. Stat. § 161.36. The LOCAL AGENCY's share of the cost shall be 50% of the total project cost.

NOW THEREFORE, BE IT FURTHER RESOLVED, that the proper Aitkin County officials are hereby authorized to execute said agreement and any amendments thereto for and on behalf of the LOCAL AGENCY.

CERTIFICATION

I hereby certify that the above Resolution was presented to and adopted by the Board of Aitkin County at a duly authorized meeting thereof on the _____ day of _____, _____.

By: _____

Date: _____

Title: _____

Resolution #20260428-xxx EXHIBIT E LOCAL AGENCY RESOLUTION

BE IT RESOLVED, that Aitkin County enter into an agreement with the BNSF Railway Company and the State of Minnesota through its Commissioner of Transportation for the installation and maintenance of railroad crossing signals at the intersection of CSAH 5 (Nature Avenue) with the tracks of the BNSF Railway Company.

BE IT FURTHER RESOLVED, that the Commissioner of Transportation is appointed agent for the Aitkin County to supervise said project and administer available federal funds in accordance with Minn. Stat. § 161.36. The LOCAL AGENCY's share of the cost shall be 50% of the total project cost.

NOW THEREFORE, BE IT FURTHER RESOLVED, that the Aitkin County Engineer is hereby authorized to execute said agreement and any amendments thereto for and on behalf of the LOCAL AGENCY.

Adopted this 28th Day of April, 2026 By The Aitkin County Board of Commissioners.

Attest:

J. Mark Wedel
County Board Chair

David J. Minke, County Administrator
Clerk to the County Board

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