



Contract Number: BF-20524082

**PRELIMINARY ENGINEERING SERVICES AGREEMENT**  
**Quiet Zone Project**

**BNSF File No.: BF-20524082**  
**Mile Post 67.60**  
**Line Segment 7506**  
**U.S. DOT Number 023370T**  
**Bay City Subdivision**

This Agreement ("**Agreement**") is executed to be effective as of the date last signed ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**") and the CITY OF BAY CITY, TEXAS a political subdivision of the State of Texas ("**Agency**").

**RECITALS**

WHEREAS, BNSF owns and operates a line of railroad in and through the CITY OF BAY CITY, State of Texas;

WHEREAS, Agency has stated its intention to proceed initially with a project to establish a Quiet Zone in accordance with the FRA Train Horn Rule, including the performance of diagnostic inspections at sixteen (16) highway-rail grade crossings in Ponca City, Oklahoma for the identification of necessary safety enhancements and related review of plans and other follow-up (the "**Project**") that include the crossings: DOT 023370T – Golden Avenue (MP 67.60), DOT 023371A – Grace Street (MP 67.89), DOT 023373N – 13<sup>th</sup> Street (MP 68.10), DOT 023374V – 12<sup>th</sup> Street (MP 68.16), DOT 023376J – 9<sup>th</sup> Street (MP 68.39), DOT 023377R – 8<sup>th</sup> Street (MP 68.46), DOT 023378X – SH 35 / 7<sup>th</sup> Street (MP 68.53), DOT 023379E – 6<sup>th</sup> Street (MP 68.61), DOT023380Y – 4<sup>th</sup> Street (MP 68.75), DOT 023381F – 3<sup>rd</sup> Street (MP 68.83), DOT 023383U – Avenue K (MP 69.09), DOT 023385H – Cottonwood Avenue (MP 69.32), DOT 023386P – Private Road (MP 69.35), DOT 023387W – Private Road (MP 69.39), DOT 023388D – Private Road (MP 69.51), and DOT 023389K – FM 2668 / Nichols Avenue ("**Crossings**");

WHEREAS, Agency has requested that BNSF perform certain preliminary engineering review services and other Work (defined below) 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; and



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

### 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, its employees, contractors, consultants, or other agents (collectively, the "**BNSF Parties**") pursuant to this Agreement, including, but not limited to: (a) conducting on-site visits including diagnostic evaluations; (b) performing preliminary engineering services; (c) developing cost estimates for construction of the Project; (d) preparing draft agreements including legal review; and (e) reviewing and/or providing comments on preliminary layouts or other designs, plans, and/or documents in connection with the Project.

#### **2) Payment and Deposit 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 without limitation: (a) labor, supplies, and material; (b) direct and indirect labor and contractor charges including additives; (c) delivery charges; (d) BNSF's additives and overhead, as such are in effect on the date BNSF prepares its final billing; and (e) all applicable taxes due, paid, or payable by BNSF on such products and services, including sales and use taxes, business and occupation taxes, and similar taxes (collectively, "**Actual Costs**"). BNSF's estimated cost for Work on this Project is \$39,337 ("**Estimated Cost**"). Any estimate provided by BNSF for the Work shall not be a limitation on the Work to be performed or the costs and expenses incurred, 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 to date. Agency must reimburse BNSF for completed Work within thirty (30) days of the date of the invoice for such Work. Upon final 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



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Agreement which are past such thirty (30) or ninety (90) day terms, as applicable. 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 and Limitations of Agreement**

The parties acknowledge that entering into this Agreement does not of itself obligate either BNSF or Agency to participate in the construction of the Project. If Agency elects to proceed with the Project after the Work is performed, then BNSF and Agency agree to enter into negotiations for appropriate agreements regarding the construction of the Project and other related activities. Nothing in this Agreement — including BNSF's performance of the Work — shall obligate BNSF to enter into any subsequent agreement or otherwise permit the Project *except and subject to* any terms and conditions that BNSF may subsequently approve in its sole discretion.

The Project is understood to be undertaken, in whole or in part, as part of Agency's proposal to seek to establish and/or maintain a quiet zone in accordance with 49 CFR Part 222 ("**Quiet Zone**"). Agency acknowledges that BNSF does not recommend the establishment of a Quiet Zone and believes that, if not properly accounted for with appropriate safety enhancements, the elimination of the train horn can be detrimental to safety. The train horn is intended to alert the motoring and pedestrian public of train movement, and Agency is responsible for using the requirements provided at 49 CFR Part 222 as a minimum guideline in any approach to creating a situation where the train horn is eliminated. The Work to be performed by BNSF for the Project is not intended to be an endorsement or approval of the use of the Crossing or of any facilities or equipment to be installed by BNSF for the purposes of establishing or maintaining a Quiet Zone. 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 the BNSF Parties hereunder, are expressly limited to — and are intended and understood by the parties to be in furtherance of — BNSF's railroad purposes, and are not in furtherance of Agency's purposes in undertaking the Project.

BNSF is providing the Work — including without limitation the design, selection, or provision of signal equipment and other Crossing appurtenances or BNSF's modifications under or subsequent to this Agreement, including the review or adequacy of any existing equipment or appurtenances — in consideration of BNSF's subjective standards for its railroad purposes only. Consequently, the Work shall in no way be construed or deemed



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to be BNSF's recommendation, condition, or direction to Agency, nor shall the Work be construed or deemed to be BNSF's opinion or approval that the plans and specifications or any work intended or completed on the Project (a) is appropriate for any other purpose including Agency's use of the Crossing for highway purposes; (b) is structurally sound; or (c) meets 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. **AGENCY SHALL WAIVE ANY CLAIMS AGAINST BNSF FOR — AND SHALL RELEASE BNSF FROM — ANY AND ALL CLAIMS WHICH MAY OR COULD RESULT FROM THE WORK PERFORMED HEREUNDER, AND IF APPLICABLE TO THE FULLEST EXTENT PERMITTED BY LAW, AGENCY SHALL INDEMNIFY BNSF FOR AND HOLD IT HARMLESS FROM AND AGAINST ANY SUCH CLAIMS.** Agency is solely responsible for obtaining regulatory approvals consistent with this Agreement.

AGENCY is solely responsible for establishing, and if approved, maintaining compliance of any Quiet Zone authorized by the Federal Railroad Administration, at its sole expense. Any additional work or equipment required to be installed at the Crossing as the result of the establishment of a Quiet Zone shall be at no cost to BNSF.

#### **4) No Right of Entry**

Nothing in this Agreement shall be construed as providing Agency or its contractors, consultants, or other agents any right of entry upon property owned or occupied by BNSF. Any preliminary engineering or other work required by Agency in connection with the Project necessitating entry upon BNSF's railroad right-of-way shall only be conducted as authorized by a separate written permit obtained by Agency from BNSF for such entry ("Entry Permit").

The Entry Permit will provide that any on-site visits, including diagnostic evaluations, by Agency and its parties required for the Project shall be conducted only from adjoining properties, and Agency shall ensure that no attendees enter or remain on BNSF's right-of-way, except when using an authorized highway-rail crossing designated for such purpose.

Agency or its agents must contact BNSF's Manager of Public Projects, Tim Huya at [tim.huya@bnsf.com](mailto:tim.huya@bnsf.com), or BNSF's permitting agent Jones Lang LaSalle Brokerage, Inc. ("JLL") at <http://bnsf.railpermitting.com/> to obtain the required Entry Permit prior to any entry.

#### **5) Disclaimer**



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**BNSF GIVES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY, QUALITY, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY OTHER MATTER, OF OR FOR 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 IN NO WAY BE RESPONSIBLE FOR AGENCY'S PROPER RELIANCE UPON, INTERPRETATION OF, OR OTHER USE OF THE WORK. BNSF IS NOT A CONTRACTOR, AGENT, PARTNER, OR JOINT VENTURER OF AGENCY BECAUSE OF THIS AGREEMENT OR BECAUSE OF BNSF'S PERFORMANCE OF THE WORK. LIKewise, THE BNSF PARTIES WHO MAY ASSIST BNSF IN PERFORMING THE WORK ARE DOING SO FOR BNSF'S BENEFIT ONLY, AND ARE NOT — AND SHALL NOT BE DEEMED TO BE — CONTRACTORS, SUBCONTRACTORS, OR AGENTS OF AGENCY.**



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

**City of Bay City, Texas**

**BNSF Railway Company**

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

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

Name: Robert Nelson  
Mayor

Name: Timothy J. Huya  
Manager Public Projects II

Accepted and effective: \_\_\_\_\_

Invoices to be submitted to Agency at:  
City of Bay City  
Attn: Scotty Jones  
1901 Fifth Street  
Bay City, TX 77414  
Email: [SJones@CityofBayCity.org](mailto:SJones@CityofBayCity.org)  
Office: 979-245-2137



June 28, 2024

**Mr. Tim Huya**  
Manager Public Projects  
BNSF Railway  
4200 Deen Road  
Fort Worth, TX 76106

RE: **QZ Diagnostic Support Services for the Bay City, TX (16 crossings)**

Dear Mr. Huya:

Alfred Benesch & Company (Benesch) appreciates the opportunity to provide the following proposal to provide diagnostic meeting support and plan review for the quiet zone diagnostic meetings at sixteen (16) grade crossings in Bay City, TX on BNSF Railway.

**PROJECT UNDERSTANDING & SCOPE OF WORK**

Diagnostic Support Services scope of work to include:

1. Review existing data/aerials/inventory/crash data
2. Conduct pre-diagnostic review - on-site
3. Prepare diagnostic package
4. Conduct pre-diagnostic review w/BNSF MPP
5. Participation in diagnostic team meeting (on-site)
6. Preparation of BNSF diagnostic workbook, photos & sketch
7. Review/comment on City's diagnostic team notes
8. Post diagnostic meetings/conference calls
9. Post diagnostic plan review
10. Project management/accounting

Tim Oster will be the lead on this project. Benesch is also prepared to add additional highly qualified professionals familiar with BNSF's standards, policies and processes to the team as needed to meet any additional needs of BNSF, but all work will be completed under my direction.

**PROJECT MANAGEMENT – INVOICING & PROGRESS REPORTS**

Monthly invoices will be provided for the project including any direct expenses. Benesch will actively monitor the budget for this project and provide notice to BNSF if we believe the budget will not be adequate to complete the review and support work for the project.

**ESTIMATED FEE**

Benesch proposes to perform this work for an estimated cost of \$39,337. We can initiate work under this contract within five (5) days upon notice to proceed. We appreciate the opportunity to be considered for this assignment. Please let me know if you have any questions or require additional information.

Sincerely,

*Tim Oster*

Tim Oster  
Sr Project Manager – Fort Worth Office