

**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: October 26, 2020**

<b>AGENDA ITEM:</b>	
Preliminary Engineering Agreement with Burlington Northern Santa Fe (BNSF)	
<b>PREPARED BY:</b>	<b>DIRECTOR APPROVAL:</b>
Jeff Laycock, City Engineer	
<b>DEPARTMENT:</b>	
Public Works, Engineering	
<b>ATTACHMENTS:</b>	
Preliminary Engineering Agreement	
<b>BUDGET CODE:</b>	<b>AMOUNT:</b>
	\$299,219
<b>SUMMARY:</b>	

City staff are in the process of evaluating a Quiet Zone at railroad crossings within City limits, which would eliminate the train horn at each crossing. Each crossing will need to be evaluated and improvements constructed in order to obtain approval for the Quiet Zone.

The next step is to conduct an onsite diagnostic team meeting and analysis at each crossing with various stakeholders, which would include BNSF. BNSF requires a Preliminary Engineering Agreement (PEA) to fund 3<sup>rd</sup> party support for project review/commentary associated with the Quiet Zone. Under Task 1 of the PEA, the 3<sup>rd</sup> party consultant (RailPros) will attend the diagnostic review meeting and review proposed layouts, providing input on requirements for each crossing. This information will be used to provide a better understanding of all requirements and costs moving forward in order to implement the Quiet Zone. The total cost of Task 1 of the PEA is estimated at \$64,176.

The PEA also includes cost for services under Task 2 – 4, which is the basis of estimate for ongoing review of plans associated with Quiet Zone. If the City moves forward with design of improvements, then Task 2 – 4 of the PEA will be utilized. Tasks 2 – 4 is estimated at \$235,043. The estimated total of the PEA is \$299,219 for all tasks.

For the purpose of this agreement, all crossings within the City will be reviewed in order to provide complete information on all crossings. Implementation of a Quiet Zone throughout the City could be scaled to only include certain crossings.

**RECOMMENDED ACTION:** Staff recommends Council authorize the Mayor to sign and execute the enclosed Preliminary Engineering Agreement with Burlington Northern Santa Fe (BNSF) for their work on a Quiet Zone.

**PROPOSED MOTION:** I move to authorize the Mayor to sign and execute the agreement.

**PRELIMINARY ENGINEERING SERVICES AGREEMENT**

**BNSF File No.: BF10017498  
Mile Post 38.49-45.90  
Line Segment 50  
Bellingham Subdivision**

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

**RECITALS**

WHEREAS, BNSF owns and operates a line of railroad in and through the City of Marysville, State of Washington;

WHEREAS, Agency has stated its intention to proceed initially with a project to evaluate the feasibility of a Quiet Zone corridor throughout the City of Marysville which consists of 24 at-grade crossings (**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 Two Hundred Ninety Nine Thousand Two Hundred Nineteen and No/100 Dollars (\$299,219), 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.

**City of Marysville**

**BNSF Railway Company**

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

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

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

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

Manager Public Projects

Accepted and effective this \_\_\_\_ day of \_\_\_\_\_, 2020.

## Jeff Laycock

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**From:** Semenick, Stephen <Stephen.Semenick@BNSF.com>  
**Sent:** Tuesday, October 13, 2020 3:51 PM  
**To:** Jeff Laycock  
**Subject:** [External!] RE: [External!] [Potential Spam] Marysville Quiet Zone Corridor PEA Template

External Email Warning! Use caution before clicking links or opening attachments.

Jeff,

Railpros has provided an estimate to complete on-site diagnostics and design reviews at the 24 crossings included in the City's proposed QZ corridor. The crossings were divided into 3 groups based on scope of work – 1) Interconnected locations 2) Non-Interconnected locations and 3) Private Crossings. The Bellingham subdivision crossings and spur line crossings were further divided. Please see below for a breakdown of each groups cost, and total cost for all locations.

### 1) Interconnected Locations (Bellingham Subdivision)

- a. SR-528 (4<sup>th</sup> St), 80<sup>th</sup> St NE, 88<sup>th</sup> St NE, 116<sup>th</sup> St NE, & 136<sup>th</sup> St

Table 1

#	Task	Labor Cost
1	PM, Field Review & Diagnostic Meeting Support (5 locations)	\$13,370
2	Review of agency plans (60%, 90%)	\$28,200
3	Review of Grade Crossing Preemption Calculations and BNSF Preemption Request Form	\$10,030
4	Interconnected Grade Crossing Reports and Agency Comment Resolution	\$23,504
	Subtotal	\$75,104

### 2) Non-Interconnected Locations (Bellingham Subdivision)

- a. 1<sup>st</sup> St, 8<sup>th</sup> St, Grove St, 104<sup>th</sup> St NE, 122<sup>nd</sup> St NE, 128<sup>th</sup> St NE, and 172<sup>nd</sup> St NE

Table 2

#	Task	Labor Cost
1	PM, Field Review & Diagnostic Meeting Support (7 locations)	\$18,718
2	Review of agency plans (60%, 90%)	\$36,105
3	Grade Crossing Reports and Agency Comment Resolution (Preliminary, Final)	\$31,150
	Subtotal	\$85,973

### 3) Private Crossing Locations (Bellingham Subdivision)

Table 3

#	Task	Labor Cost
1	PM, Field Review & Diagnostic Meeting Support (7 locations)	\$18,718

2	Review of agency plans (60%, 90%)	\$28,795
4	Grade Crossing Reports and Agency Comment Resolution (Preliminary, Final)	\$25,555
Subtotal		\$73,068

**4) Non-Interconnected Locations (Bellingham Spur Line)**

a. State Avenue, 128<sup>th</sup> St NE, 136<sup>th</sup> St NE, 51<sup>st</sup> Ave NE, 152<sup>nd</sup> St NE

Table 4

#	Task	Labor Cost
1	PM, Field Review & Diagnostic Meeting Support (5 locations)	\$13,370
2	Review of agency plans (60%, 90%)	\$28,200
4	Grade Crossing Reports and Agency Comment Resolution (Preliminary, Final)	\$23,504
Subtotal		\$65,074

Table #	Description	# of Locations	Fee
1	Interconnected Locations (Bellingham Subdivision)	5	\$75,104
2	Non-Interconnected Locations (Bellingham Subdivision)	7	\$85,973
3	Private Crossing Locations (Bellingham Subdivision)	7	\$73,068
4	Non-Interconnected Locations (Bellingham Spur Line)	5	\$65,074
Totals		24	\$299,219

Please let me know if you have any questions about the breakdown, and if you would like to proceed with PEA execution. I'm targeting the week of November 30<sup>th</sup> for these diagnostics, so please let me know your teams availability for that week. I'll follow up with a separate email regarding the fill adjacent to the 1<sup>st</sup> St crossing.

Thanks,

**Stephen Semenick, PE**

Manager Public Projects – WA, OR, & B.C.  
 BNSF Railway Company  
 2454 Occidental Ave S, Suite 1A  
 Seattle, WA 98134

Office: 206.625.6152  
 Cell: 817.422.2486

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**From:** Jeff Laycock <jlaycock@marysvillewa.gov>  
**Sent:** Monday, September 28, 2020 3:28 PM  
**To:** Semenick, Stephen <Stephen.Semenick@BNSF.com>  
**Cc:** 'Robert Albritton' <rla@quietzonetech.com>  
**Subject:** RE: [External!] [Potential Spam] Marysville Quiet Zone Corridor PEA Template