



Contract Number: BF20198388-A-0001
Amendment Number: 1

PRELIMINARY ENGINEERING SERVICES AGREEMENT
Project Review and Diagnostic Evaluation
AMENDMENT 1

This Amendment 1 (the "Amendment") is entered into as of _____, by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**BNSF**") and the **CITY OF RIVERSIDE**, a political subdivision of the State of CA ("**Agency**")

WHEREAS, BNSF and Agency are parties to the BF20198388: Third Street Grade Separation Project, dated June 6, 2022, BNSF Contract Number BF20198388 (together with any and all modifications, supplements and amendments thereto, the "Agreement"); and

WHEREAS, the parties desire to amend certain provisions of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants exchanged herein, BNSF and Agency agree as follows:

1. **Article 2) Payment for Work**: Section 2 of the Agreement is deleted in its entirety and replaced with the following:

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: labor, supplies, and material; direct and indirect labor and contractor charges including additives; delivery charges; BNSF's additives and overhead, as such are in effect on the date BNSF prepares the invoice; and 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 ("**Actual Costs**"). BNSF's estimated Cost for Work on this Project is \$110,000 ("**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 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



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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. and Agency shall ensure that no attendees enter or remain on BNSF right of way, except when using an authorized highway-rail crossing designated for such purpose.

Agency or its agents shall contact BNSF's Manager or Public Projects Dionisio Martinez at 909-386-4474, or BNSF's permitting partner Jones Lang LaSalle Brokerage, Inc. (JLL) at <http://bnsf.railpermitting.com/> to obtain the required permit prior to any entry.

2. The parties may execute multiple counterparts of this Amendment, each of which will be deemed an original and all of which together will constitute one and the same instrument. The parties may exchange counterpart signatures by facsimile or electronic transmission (including PDF and TIF formats) and the same will constitute delivery of this Amendment with respect to the delivering party.
3. Except as amended herein, the terms and conditions of the Agreement remain in effect. Capitalized terms not defined herein have the same meaning as set forth in the Agreement.

(Signature page follows)



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BNSF and Agency have caused this Amendment to be entered into on the date stated in the introductory clause.

CITY OF RIVERSIDE

BNSF RAILWAY COMPANY

(Signature)

(Signature)

(Name Printed)

(Name Printed)

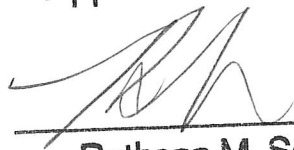
(Title)

(Title)

CERTIFIED AS TO FUNDS AVAILABILITY

BY: 
ASSISTANT CHIEF FINANCIAL OFFICER

Approved as to Form:

By: 
Ruthann M. Salera
Deputy City Attorney