



City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: SEPTEMBER 26, 2017

FROM: PUBLIC WORKS DEPARTMENT WARDS: 3, 4, 5, AND 6

SUBJECT: AGREEMENT WITH BURLINGTON NORTHERN SANTA FE RAILWAY FOR CONSTRUCTION AND MAINTENANCE OF SAFETY IMPROVEMENTS RELATED TO THE QUIET ZONE - AUTHORIZE AN INCREASE IN CHANGE ORDER AUTHORITY FROM \$150,000 TO \$524,896.50 FOR A FINAL AGREEMENT AMOUNT OF \$7,585,254.50

ISSUE:

Authorize an increase in the change order authority from \$150,000 to \$524,896.50 for the Agreement with the Burlington Northern Santa Fe Railway for Construction and Maintenance of Safety Improvements Related to the Quiet Zone along the rail corridor between Buchanan Street and Mary Street for a final Agreement amount of \$7,585,254.50.

RECOMMENDATIONS:

That the City Council authorize an increase in the change order authority for the Agreement with the BNSF for the Construction and Maintenance of Safety Improvements Related to the Quiet Zone from \$150,000 to \$524,896.50 for a final agreement amount of \$7,585,254.50.

BACKGROUND:

On May 28, 2013, the City Council approved a Construction and Maintenance Agreement (Agreement) with the Burlington Northern Santa Fe Railway (BNSF) for the construction and maintenance of safety improvements related to the Quiet Zone along the BNSF rail corridor between Buchanan Street and Mary Street in the amount of \$7,060,358.

On November 19, 2013, the City Council authorized a supplemental appropriation of federal Surface Transportation Program funds in the amount of \$6,563,062 for construction of the safety improvements required for the Quiet Zone. The required \$850,314 in local matching funds was available in the project account. The supplemental appropriation and required match funds totaled \$7,413,376.

The City provided the BNSF with written Notice to Proceed with the project on October 29, 2013. The project construction began in March 2015 and was completed in October 2016.

DISCUSSION:

Under the terms of the Agreement, the City was required to issue written Notice to Proceed and pay the BNSF's estimated materials costs prior to the BNSF ordering materials and scheduling the work, and to pay the BNSF's estimated labor costs at least 60 days prior to the start of construction. The BNSF was required to complete all work within eighteen months of receiving the written Notice to Proceed.

On October 29, 2013, the City provided the BNSF with written Notice to Proceed and a check in the amount of \$3,109,142 for advance payment of BNSF's estimated materials costs. On July 21, 2014, the City sent the BNSF a check in the amount of \$2,438,420 for BNSF's estimated labor costs.

The BNSF began installing the rail related safety improvements for the Quiet Zone in March 2015. The work was completed in October 2016, nearly 36 months after the City issued the Notice to Proceed. Shortly before completing the work, the BNSF advised Public Works staff that project costs were anticipated to exceed the Agreement amount by approximately \$500,000, primarily due to labor costs incurred due to the extended duration of the work.

On August 18, 2017, the BNSF submitted the final invoice for the project in the amount of \$2,037,450.25. The total project cost based on the final invoice amount, advance payments for labor and materials costs, and prior invoice for billing expenses is \$7,585,254.50 (Table 1). The BNSF's costs exceed the \$7,060,358 Agreement amount by \$524,896.50.

Table 1— Project Costs

Task	Amount
Advance Payment for BNSF Materials Costs	\$3,109,142.00
Advance Payment for BNSF Labor Costs	\$2,438,420.00
2016 Payment to BNSF Billing Expenses	\$242.25
Amount Paid to Date	\$5,547,804.25
BNSF Final Invoice dated August 18, 2017	\$2,037,450.25
BNSF Total Project Cost	\$7,585,254.50

Under the terms of the Agreement, the City is required to pay the BNSF for all actual labor costs, material costs, equipment costs, and other costs and expenses incurred by BNSF in performing the railroad work required for the project construction. The Public Works Department is requesting the change order authority for the project be increased to \$524,896.50 to allow the final invoice to be paid. Sufficient funds are available in the Project Account Nos. 9590132-440312 and 9590128-440125 to process a change order and pay the BNSF's final invoice.

FISCAL IMPACT:

Sufficient funds are available in the Quiet Zone Project Account Nos. 9590132-440312 and 9590128-440125 to cover the increased change order authority in the amount of \$524,896.50 and to pay the BNSF's final invoice in the amount of \$2,037,450.25.

Prepared by: Kris Martinez, Public Works Director
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 availability of funds: Adam Raymond, Chief Financial Officer/Treasurer
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