

**City of Kaukauna**  
**Board of Public Works**

**May 16<sup>th</sup> 2022**

jwn/engr dept

**Agenda Item # 2c**  
**Railroad Quiet Zone Update and Proposal**

**Background**

Please see attached cover letter and proposal from Bryan Cunningham of S.E.H. concerning the railroad quiet zone and proposed next steps.

**Possible Action**

If the Board chooses to move into the next phase of the Quiet Zone, we would look for a motion to authorize the Director of Public Works to enter into an agreement with SEH to create preliminary plans and submit a notice of intent.



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May 11, 2022

RE: Proposal for Professional Services  
City of Kaukauna  
Railroad Quiet Zone Notice of Intent

John Neumeier  
Director of Public Works / City Engineer  
City of Kaukauna  
P.O. Box 890  
Kaukauna, WI 54130

Dear Mr. Neumeier:

We are pleased to have an opportunity to continue to assist the City of Kaukauna with the implementation of a Quiet Zone along the existing Wisconsin Central Ltd / Canadian National (CN) mainline corridor that extends through the City. Short Elliott Hendrickson Inc. (SEH) has significant experience in evaluating and implementing Quiet Zones, and we are eager to help the City of Kaukauna advance the process and find solutions to provide relief from locomotive horns.

## Background

Currently CN, the railroad that operates through Kaukauna, is required by the Federal Railroad Administration (FRA) to blow their horn at every public highway-railroad grade crossing. To provide relief from the impact of train horn noise to the residents of Kaukauna, the City has taken several initial steps, and continues to pursue the Federal requirements necessary to enact a Quiet Zone. The basic approach for establishing a Quiet Zone in this case, would involve making physical safety improvements at the crossing locations to counteract the decreased safety resulting from trains not blowing their horns.

SEH completed an initial preliminary feasibility study related to Quiet Zones which included the 13 crossings on the mainline and spur tracks in the City of Kaukauna. This was presented to the Board of Public Works on October 5, 2020. After narrowing down the scope of the Quiet Zone, SEH prepared a focused study which looked closer at options for the four at-grade crossings on the mainline track within the City, at Delanglade, Tobacnoir, Division, and Gertrude Streets. Findings and alternatives from this focused study were presented and discussed at a Diagnostic Review meeting held on July 29, 2021 in Kaukauna. The meeting, required in the Quiet Zone process, included discussions and field review by representatives from the City, CN Railroad, FRA, Office of the Commissioner of Railroads (OCR), WisDOT, and SEH. After this meeting, a general approach for improvements at the four crossings was determined to create channelizing barriers at the crossing approaches, to limit the possibility of traffic crossing the centerline to bypass the crossing gate arms. More specifically the conceptual approach for each of the crossings is as follows:

- Delanglade Street – Enhance and extend the existing concrete median by adding channelizing delineator posts
- Division Street – Install channelizing delineator posts on centerline on both sides to meet standard safety measures

Engineers | Architects | Planners | Scientists

Short Elliott Hendrickson Inc., 3535 Vadnais Center Drive, St. Paul, MN 55110-5196

SEH is 100% employee-owned | [sehinc.com](http://sehinc.com) | 651.490.2000 | 800.325.2055 | 888.908.8166 fax

- Tobacnoir Street – Install channelizing delineator posts on centerline on both sides to meet standard safety measures
- Gertrude Street – Install channelizing delineator posts on centerline in a shortened configuration

When streets are reconstructed as part of a future Capital Improvement Project, additional enhancements such as full concrete median barriers may be added, but the installation of channelizing delineator posts is the most likely method of immediate improvement to facilitate the initial establishment of the Quiet Zone. Potential future street reconstruction work, or related future updates to the Quiet Zone designation, are not included in this proposal.

SEH has been asked to prepare a proposal to move forward with some next steps related to the establishment of a Quiet Zone within the City. This proposal and tasks will concentrate on the mainline crossings within the City, with the tasked scope as outlined below.

### **Proposed Scope of Work**

#### **Task 1 – Preliminary Crossing Improvement Plans**

SEH will develop preliminary plans for the improvements at each of the four crossings, based on the concepts and information from the focused study, City discussions, and Diagnostic Review meeting. These preliminary plans will not be final construction documents, but will be suitable for review by the City, and submittal to concerned parties as part of the Notice of Intent (NOI) process. Tasks will also include risk index calculations and updating the DOT Crossing Inventory Forms with current information to be submitted with the NOI. Preliminary planning will also prepare cost estimates, and investigate permit requirements for proposed improvement work on Hwy 55 (Delanglade St.). Task will include submittal of plan to City, and an associated review meeting prior to compilation of the NOI.

#### **Task 2 – Notice of Intent (NOI)**

The Notice of Intent process to establish a Quiet Zone provides the railroad and other agencies relevant data and an opportunity to comment on the proposed Quiet Zone improvements prior to implementation. After notifications, data, proposed schedule, and preliminary plans are sent to concerned parties, there is a 60-day comment period where they can provide input on the proposed improvements. SEH will provide a packet of information suitable for NOI submittal, with guidance for the City to send the Notice to the concerned parties via registered mail. Mailings will be submitted to CN, FRA, OCR, and WisDOT.

**Professional Fee:** Each of these tasks will be implemented as directed by and coordinated with City staff. We will invoice for our efforts up to a not to exceed amount of \$14,800 for the tasks described above.

#### **PROFESSIONAL FEE SCHEDULE**

Task 1 – Preliminary Crossing Improvement Plans	\$ 9,400
Task 2 – Notice of Intent (NOI)	<u>\$ 5,400</u>
<b>Total Professional Fees</b>	<b>\$ 14,800</b>

**Additional Services:** The partial list below describes some services which are not included in this proposal. The list is also intended to serve as a basic description of some of the tasks which would need to occur as the Quiet Zone process moves forward. If the City of Kaukauna wishes for SEH to perform these or any other Additional Services, the City of Kaukauna shall so request in writing. SEH can perform approved Additional Services at current hourly rates or based on a supplemental agreement between SEH and the City of Kaukauna.

- Vehicle traffic counts at crossing locations. (Planned for completion by WisDOT Summer 2022)
- Survey or field visits

- Preparation of detailed final plans or bidding documents for safety measure improvements at crossing locations
- Public involvement meetings or materials, or discussion with individual property owners or residents near crossing locations who may be affected by channelization delineators
- Preparation or submittal of Notice of Establishment (NOE) to the railroad and agencies after completion of crossing improvements

Thank you for this opportunity for SEH to continue to work with the City of Kaukauna, I can be reached at 715.271.7522, or [bcunningham@sehinc.com](mailto:bcunningham@sehinc.com), to address any inquiries.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan Cunningham". The signature is fluid and cursive, with the first name "Bryan" being more prominent than the last name "Cunningham".

Bryan Cunningham, PE (WI)  
Project Manager

c: Trevor Frank, SEH

## Agreement for Professional Services

This Agreement is effective as of May 17, 2022, between City of Kaukauna (Client) and Short Elliott Hendrickson Inc. (Consultant).

This Agreement authorizes and describes the scope, schedule, and payment conditions for Consultant's work on the Project described as: City of Kaukauna Railroad Quiet Zone Notice of Intent.

**Client's Authorized Representative:** John Neumeier, Director of Public Works  
**Address:** 144 W. Second Street  
Kaukauna, WI 54130  
**Telephone:** 920.766.6305 **email:** neumeier@kaukauna-wi.org

**Project Manager:** Bryan Cunningham, PE (WI)  
**Address:** 326 S. Main St., Suite 100  
Rice Lake, Wisconsin 54868  
**Telephone:** 715.271.7522 **email:** bcunningham@sehinc.com

**Scope:** The Basic Services to be provided by Consultant as set forth herein are provided subject to the attached letter and General Conditions of the Agreement for Professional Services (General Conditions Rev. 07.14.16), which is incorporated by reference herein and subject to Exhibits attached to this Agreement.

### Task 1 – Preliminary Crossing Improvement Plans

- Prepare preliminary crossing improvement plans for the four mainline crossings within the City of Kaukauna at Gertrude, Division, Tobacnoir, and Delanglade Streets, suitable for establishment of a Quiet Zone
- Risk index calculations and update of DOT crossing inventory forms
- Opinion of probable costs
- Review meeting with City staff

*Subtotal: \$9400*

### Task 2 – Notice of Intent

- Assemble preliminary plans and data for submittal as a Notice of Intent to establish a Quiet Zone
- Facilitate mailing by City of NOI to CN Railroad, FRA, OCR, WisDOT

*Subtotal: \$5400*

**Schedule:** The anticipated project schedule would provide the preliminary plans to the City around July 15, 2022 and pending review and assembly of all other material, a NOI submittal around mid-August 2022.

**Payment:** The fee is hourly and subject to a not-to-exceed amount of \$14,800.

The payment method, basis, frequency and other special conditions are set forth in attached Exhibit A-1.


This Agreement for Professional Services, attached General Conditions, Exhibits and any Attachments (collectively referred to as the "Agreement") supersedes all prior contemporaneous oral or written agreements and represents the entire understanding between Client and Consultant with respect to the services to be provided by Consultant hereunder. In the event of a conflict between the documents, this document and the attached General Conditions shall take precedence over all other Exhibits unless noted below under "Other Terms and Conditions". The Agreement for Professional Services and the General Conditions (including scope, schedule, fee and

signatures) shall take precedence over attached Exhibits. This Agreement may not be amended except by written agreement signed by the authorized representatives of each party.

**Other Terms and Conditions:** Other or additional terms contrary to the General Conditions that apply solely to this project as specifically agreed to by signature of the Parties and set forth herein:  
None.

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**Short Elliott Hendrickson Inc.**

By:   
\_\_\_\_\_  
Trevor M. Frank, AIA  
Title: Regional Practice Center Leader

**City of Kaukauna**

By: \_\_\_\_\_  
John W. Neumeier  
Title: Director of Public Works, City Engineer

**Exhibit A-1**  
**to Agreement for Professional Services**  
**Between City of Kaukauna (Client)**  
**and**  
**Short Elliott Hendrickson Inc. (Consultant)**  
**Dated May 17, 2022**  
**Payments to Consultant for Services and Expenses**  
**Using the Hourly Basis Option**

The Agreement for Professional Services is amended and supplemented to include the following agreement of the parties:

**A. Hourly Basis Option**

The Client and Consultant select the hourly basis for payment for services provided by Consultant. Consultant shall be compensated monthly. Monthly charges for services shall be based on Consultant's current billing rates for applicable employees plus charges for expenses and equipment.

Consultant will provide an estimate of the costs for services in this Agreement. It is agreed that after 90% of the estimated compensation has been earned and if it appears that completion of the services cannot be accomplished within the remaining 10% of the estimated compensation, Consultant will notify the Client and confer with representatives of the Client to determine the basis for completing the work.

Compensation to Consultant based on the rates is conditioned on completion of the work within the effective period of the rates. Should the time required to complete the work be extended beyond this period, the rates shall be appropriately adjusted.

**B. Expenses**

The following items involve expenditures made by Consultant employees or professional consultants on behalf of the Client. Their costs are not included in the hourly charges made for services and shall be paid for as described in this Agreement but instead are reimbursable expenses required in addition to hourly charges for services:

1. Transportation and travel expenses.
2. Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets.
3. Lodging and meal expense connected with the Project.
4. Fees paid, in the name of the Client, for securing approval of authorities having jurisdiction over the Project.
5. Plots, Reports, plan and specification reproduction expenses.
6. Postage, handling and delivery.
7. Expense of overtime work requiring higher than regular rates, if authorized in advance by the Client.
8. Renderings, models, mock-ups, professional photography, and presentation materials requested by the Client.
9. All taxes levied on professional services and on reimbursable expenses.
10. Other special expenses required in connection with the Project.
11. The cost of special consultants or technical services as required. The cost of subconsultant services shall include actual expenditure plus 10% markup for the cost of administration and insurance.

The Client shall pay Consultant monthly for expenses.

**C. Equipment Utilization**

The utilization of specialized equipment, including automation equipment, is recognized as benefiting the Client. The Client, therefore, agrees to pay the cost for the use of such specialized equipment on the project. Consultant invoices to the Client will contain detailed information regarding the use of specialized equipment on the project and charges will be based on the standard rates for the equipment published by Consultant.

The Client shall pay Consultant monthly for equipment utilization.

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# General Conditions of the Agreement for Professional Services

## SECTION I – SERVICES OF CONSULTANT

### A. General

1. Consultant agrees to perform professional services as set forth in the Agreement for Professional Services or Supplemental Letter Agreement ("Basic Services"). Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder.

### B. Schedule

1. Unless specific periods of time or dates for providing services are specified, Consultant's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.
2. If Client has requested changes in the scope, extent, or character of the Project or the services to be provided by Consultant, the time of performance and compensation for Consultant's services shall be adjusted equitably. The Client agrees that Consultant is not responsible for damages arising directly or indirectly from delays beyond Consultant's control. If the delays resulting from such causes increase the cost or the time required by Consultant to perform its services in accordance with professional skill and care, then Consultant shall be entitled to a equitable adjustment in schedule and compensation.

### C. Additional Services

1. If Consultant determines that any services it has been directed or requested to perform are beyond the scope as set forth in the Agreement or that, due to changed conditions or changes in the method or manner of administration of the Project, Consultant's effort required to perform its services under this Agreement exceeds the stated fee for Basic Services, then Consultant shall promptly notify the Client regarding the need for additional services. Upon notification and in the absence of a written objection, Consultant shall be entitled to additional compensation for the additional services, and to an extension of time for completion of additional services absent written objection by Client.
2. Additional services shall be billed in accord with agreed upon rates, or if not addressed, then at Consultant's standard rates.

### D. Suspension and Termination

1. If Consultant's services are delayed or suspended in whole or in part by Client, or if Consultant's services are delayed by actions or inactions of others for more than 60 days through no fault of Consultant, then Consultant shall be entitled to either terminate its agreement upon 7 days written notice or, at its option, accept an equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect reasonable costs incurred by Consultant.
2. This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.
3. This Agreement may be terminated by either party upon thirty days' written notice without cause. All provisions of this Agreement allocating responsibility or liability between the Client and Consultant shall survive the completion of the services hereunder and/or the termination of this Agreement.
4. In the event of termination, Consultant shall be compensated for services performed prior to termination date, including charges for expenses and equipment costs then due and all termination expenses.

## SECTION II – CLIENT RESPONSIBILITIES

### A. General

1. The Client shall, in proper time and sequence and where appropriate to the Project, at no expense to Consultant, provide full information as to Client's requirements for the services provided by Consultant and access to all public and private lands required for Consultant to perform its services.
2. The Consultant is not a municipal advisor and therefore Client shall provide its own legal, accounting, financial and insurance counseling and other special services as may be required for the Project. Client shall provide to Consultant all data (and professional interpretations thereof) prepared by or services performed by others pertinent to Consultant's services, including but not limited to, previous reports; sub-surface explorations; laboratory tests and inspection of samples; environmental assessment and impact statements, surveys, property descriptions; zoning, deed and other land use restrictions; as-built drawings, electronic data base and maps. The costs associated with correcting, creating or recreating any data that is provided by the Client that contains inaccurate or unusable information shall be the responsibility of the Client.
3. Client shall provide prompt written notice to Consultant whenever the Client observes or otherwise becomes aware of any changes in the Project or any defect in Consultant's services. Client shall promptly examine all studies, reports, sketches, opinions of construction costs, specifications, drawings, proposals, change orders, supplemental agreements and other documents presented by Consultant and render the necessary decisions and instructions so that Consultant may provide services in a timely manner.
4. Client shall require all utilities with facilities within the Client's Project site to locate and mark said utilities upon request, relocate and/or protect said utilities as determined necessary to accommodate work of the Project, submit a schedule of the necessary relocation/protection activities to the Client for review and comply with agreed upon schedule. Consultant shall not be liable for damages which arise out of Consultant's reasonable reliance on the information or services furnished by utilities to Client or others hired by Client.
5. Consultant shall be entitled to rely on the accuracy and completeness of information or services furnished by the Client or others employed by the Client and shall not be liable for damages arising from reasonable reliance on such materials. Consultant shall promptly notify the Client if Consultant discovers that any information or services furnished by the Client is in error or is inadequate for its purpose.

## SECTION III – PAYMENTS

### A. Invoices

1. Undisputed portions of invoices are due and payable within 30 days. Client must notify Consultant in writing of any disputed items within 15 days from receipt of invoice. Amounts due Consultant will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) for invoices 30 days past due. Consultant reserves the right to retain Instruments of Service until all invoices are paid in full. Consultant will not be liable for any claims of loss, delay, or damage by Client for reason of withholding services or Instruments of Service until all invoices are paid in full. Consultant shall be entitled to recover all reasonable costs and disbursements, including reasonable attorney's fees, incurred in connection with collecting amounts owed by Client.
2. Should taxes, fees or costs be imposed, they shall be in addition to Consultant's agreed upon compensation.
3. Notwithstanding anything to the contrary herein, Consultant may pursue collection of past due invoices without the necessity of any mediation proceedings.



## SECTION IV – GENERAL CONSIDERATIONS

### A. Standards of Performance

1. The standard of care for all professional engineering and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily exercised by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with its services.
2. Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the work in accordance with its construction contract or the construction documents prepared by Consultant. Client acknowledges Consultant will not direct, supervise or control the work of construction contractors or their subcontractors at the site or otherwise. Consultant shall have no authority over or responsibility for the contractor's acts or omissions, nor for its means, methods or procedures of construction. Consultant's services do not include review or evaluation of the Client's, contractor's or subcontractor's safety measures, or job site safety or furnishing or performing any of the Contractor's work.
3. If requested in the scope of a Supplemental Letter Agreement, then Consultant may provide an Opinion of Probable Construction Cost. Consultant's Opinions of Probable Construction Cost provided for herein are to be made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as a professional generally familiar with the industry. However, since Consultant has no control over the cost of labor, materials, equipment or service furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, Consultant cannot and does not guarantee that proposals, bids or actual construction cost will not vary from Opinions of Construction Cost prepared by Consultant. If Client wishes greater assurance as to probable Construction Cost, Client shall employ an independent cost estimator or negotiate additional services and fees with Consultant.

### B. Indemnity for Environmental Issues

1. Consultant is not a user, generator, handler, operator, arranger, storer, transporter or disposer of hazardous or toxic substances, therefore the Client agrees to hold harmless, indemnify and defend Consultant and Consultant's officers, directors, subconsultant(s), employees and agents from and against any and all claims, losses, damages, liability and costs, including but not limited to costs of defense, arising out of or in any way connected with, the presence, discharge, release, or escape of hazardous or toxic substances, pollutants or contaminants of any kind at the site.

### C. Limitations on Consultant's Liability

1. The Client hereby agrees that to the fullest extent permitted by law, Consultant's total liability to the Client for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to the Project or this Agreement from any cause or causes including, but not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not exceed five hundred thousand dollars (\$500,000). In the event Client desires limits of liability in excess of those provided in this paragraph, Client shall advise Consultant in writing and agree that Consultant's fee shall increase by 1% for each additional five hundred thousand dollars of liability limits, up to a maximum limit of liability of five million dollars (\$5,000,000).
2. Neither Party shall be liable to the other for consequential damages, including, without limitation, lost rentals, increased rental expenses, loss of use, loss of income, lost profit, financing, business and reputation and for loss of management or employee productivity, incurred by one another or their subsidiaries or successors, regardless of whether such damages are foreseeable and are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.
3. It is intended by the parties to this Agreement that Consultant's services shall not subject Consultant's employees, officers or directors to any personal legal exposure for the risks associated

with this Agreement. The Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Consultant, and not against any of Consultant's individual employees, officers or directors, and Client knowingly waives all such claims against Consultant individual employees, officers or directors.

### D. Assignment

1. Neither party to this Agreement shall transfer, sublet or assign any rights under, or interests in, this Agreement or claims based on this Agreement without the prior written consent of the other party. Any assignment in violation of this subsection shall be null and void.

## SECTION V – DISPUTE RESOLUTION

### A. Mediation

1. Any dispute between Client and Consultant arising out of or relating to this Agreement or services provided under this Agreement, (except for unpaid invoices which are governed by Section III), shall be submitted to nonbinding mediation as a precondition to litigation unless the parties mutually agree otherwise. Mediation shall occur within 60 days of a written demand for mediation unless Consultant and Client mutually agree otherwise.

### B. Litigation – Choice of Venue and Jurisdiction

1. Any dispute not settled through mediation shall be settled through litigation in the state where the Project at issue is located.

## SECTION VI – INTELLECTUAL PROPERTY

### A. Proprietary Information

1. All documents, including reports, drawings, calculations, specifications, CADD materials, computers software or hardware or other work product prepared by Consultant pursuant to this Agreement are Consultant's Instruments of Service ("Instruments of Service") and Consultant retains all ownership interests in Instruments of Service, including all available copyrights.
2. Consultant shall retain all of its rights in its proprietary information including, without limitation, its methodologies and methods of analysis, ideas, concepts, expressions, inventions, know how, methods, techniques, skills, knowledge and experience possessed by Consultant prior to, or acquired by Consultant during, the performance of this Agreement and the same shall not be deemed to be Work Product or Work for Hire and Consultant shall not be restricted in any way with respect thereto.

### B. Client Use of Instruments of Service

1. Provided that Consultant has been paid in full for its services, Client shall have the right in the form of a license to use Instruments of Service resulting from Consultant's efforts on the Project. Consultant shall retain full rights to electronic data and the drawings, specifications, including those in electronic form, prepared by Consultant and its subconsultants and the right to reuse component information contained in them in the normal course of Consultant's professional activities. Consultant shall be deemed to be the author of such Instruments of Service, electronic data or documents, and shall be given appropriate credit in any public display of such Instruments of Service.
2. Records requests or requests for additional copies of Instruments of Services outside of the scope of services are available to Client subject to Consultant's current rate schedule.

### C. Reuse of Documents

1. All Instruments of Service prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other Project. Any reuse of the Instruments of Service without written consent or adaptation by Consultant for the specific purpose intended will be at the Client's sole risk and without liability or legal exposure to Consultant; and the Client shall release Consultant from all claims arising from such use. Client shall also defend, indemnify and hold harmless Consultant from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from reuse of Consultant documents without written consent.