

# **City of Scottsbluff, Nebraska**

**Tuesday, January 22, 2019**

**Regular Meeting**

## **Item Reports5**

**Council to approve the Railroad Quiet Zone Services Agreement between the City and Felsburg, Holt and Ullevig, Inc. for update services and authorize the Mayor to execute the Agreement.**

**Staff Contact: Mark Bohl, Public Works Director**

# Agenda Statement

Item No.

For Meeting of: January 22, 2019

**AGENDA TITLE:** Approve Railroad Quiet Zone Services Agreement between the city and Felsburg, Holt and Ullevig, Inc. for update services.

**SUBMITTED BY:** Mark Bohl, Director of Public Works

**PRESENTATION BY:** Nathan Johnson, City Manager

**SUMMARY EXPLANATION:** The City of Scottsbluff needs to update the Quiet Zone every 4 ½ to 5 years per the Federal Railroad Administration to stay in compliance. Our Quiet Zone was established April 24, 2014. Felsburg, Holt & Ullevig will assist the city in retaining the Quiet Zone along the BNSF mainline through town, i.e. reviewing initial Quiet Zone construction plans, photos and checklists of each crossing to determine if geometrics and traffic control have changed. City agrees to the terms and conditions of this agreement.

**BOARD/COMMISSION RECOMMENDATION:**

**STAFF RECOMMENDATION:** Staff recommends that Council authorize the Mayor to execute this agreement.

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## EXHIBITS

Resolution ☐ Ordinance ☐ Contract ☐ Minutes ☐ Plan/Map ☐

Other (specify) ☒ Agreement with Felsburg Holt & Ullevig and pertaining information for Quiet Zone.

Notification List: Yes ☐ No ☐ Further Instructions ☐

**APPROVAL FOR SUBMITTAL:** \_\_\_\_\_

City Manager

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## RAILROAD QUIET ZONE SERVICES AGREEMENT

THIS RAILROAD QUIET ZONE PERIODIC UPDATE SERVICES AGREEMENT ("Agreement") is made on \_\_\_\_\_ by and between the City of Scottsbluff, a Nebraska City of the First Class, (the "City") and Felsburg Holt & Ullevig, Inc., a Colorado Corporation ("FHU").

### RECITALS

- A. On or about January 4, 2019, FHU submitted to the City a proposal for engineering services associated with reviewing railroad crossing improvements in the City to retain the Scottsbluff Railroad Quiet Zone. The proposal consisted of a letter from Kyle Anderson and Rick Haden of FHU to Mark Bohl, the Public Works Director of the City. This letter (Appendix A), and "Letter Agreement Standard Provisions" (Attachment B) are attached hereto and incorporated into this agreement. All references herein to "this Agreement" shall incorporate, and also be a reference to, those documents.

In CONSIDERATION of the foregoing recitals, and other valuable consideration, the receipt of which is acknowledged, the City and FHU agree as follows:

1. The City accepts the proposal submitted by FHU, subject to the terms and conditions set forth in this Agreement, and FHU agrees to perform pursuant to this Agreement for the fees as detailed in Attachment C.
2. This Agreement may be terminated by the City upon not less than seven days' written notice to FHU for the City's convenience and without cause. In the event the City terminates this Agreement without cause, FHU shall be compensated for the services it performed and the expenses it incurred prior to termination.

IN WITNESS WHEREOF, the parties have executed this agreement on the date(s) set forth below. Once this Agreement is executed, FHU may proceed with its services pursuant to the Agreement.

#### Felsburg Holt & Ullevig

#### City of Scottsbluff, Nebraska

By: \_\_\_\_\_  
Kyle A. Anderson, PE, PTOE

By: \_\_\_\_\_  
Raymond Gonzales, Mayor

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk



January 4, 2019

Attachment A

Mr. Mark Bohl  
Public Works Director  
City of Scottsbluff  
1105 3<sup>rd</sup> Avenue  
Scottsbluff, NE 69361

RE: Scottsbluff Quiet Zone  
Periodic Update Services

Dear Mark,

Per your request, Felsburg Holt & Ullevig (FHU) is submitting this revised proposal for services to review the approximate two-mile BNSF corridor in Scottsbluff with associated railroad crossing safety measures for continued compliance with the Final Rule 49 CFS (Sec. 222.47).

### General Background

The Use of Locomotive Horns at Highway-Rail Grade Crossings; Final Rule 49 CFS (Sec. 222.47) requires each quiet zone established with Supplementary Safety Measures (SSMs) to have periodic updates 4.5-5 years after their establishment. This is an affirmation by the local authority in writing to the Federal Railroad Administration (FRA) that the quiet zone continues to conform to the requirements of the Final Rule.

According to our records, the Scottsbluff Quiet Zone was established on April 24, 2014, which means it should be updated between October 24, 2018 and April 24, 2019.

FHU will assist the City of Scottsbluff in retaining the Quiet Zone along the BNSF mainline through downtown. We will review the initial quiet zone construction plans, and city provided photos and checklists of each crossing to determine if crossing conditions have changed, both in terms of geometrics and traffic control.

FHU will review the current DOT website for inventory and crash information. We will draft new inventory sheets with updated information and a Notice of Affirmation for retaining the existing quiet zone. This work will include the six crossings of the BNSF in the Scottsbluff Quiet Zone at:

- 9<sup>th</sup> Avenue, DOT # 089151N, MP 030.06
- 5<sup>th</sup> Avenue, DOT # 089152V, MP 030.34
- Broadway, DOT # 089153C, MP 030.81
- Avenue B, DOT # 089154J, MP 031.02
- W. 20<sup>th</sup> Street, DOT # 089156X, MP 031.47
- Avenue I, DOT # 089157E, MP 031.71

We assume the City will provide 24-hour traffic counts taken in 2018 at each crossing, take photos on the approaches of each crossing (per FHU guidance), and complete check lists provided by FHU of quiet zone and inventory requirements.

The Supplementary Safety Improvements (SSMs) at each of the highway-railroad crossings will be reviewed per the FRA's Final Rule for establishing Quiet Zones. We will also review each crossing improvement for

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402.438.7530 | WWW.FHUENG.COM



continued conformance with recent Quiet Zone requirements, determinations, waivers, and interpretations by BNSF, NDOT, and FRA. We will identify any potential issues as part of our base services, and if needed, would be willing to assist the City in resolving any necessary compliance actions as supplemental services.

We have based our fee estimates on the following Scope of Services including preparation of draft documents for the City of Scottsbluff to submit to the BNSF, FRA, and NDOT.

### **Project Scope of Services**

This scope of services is for the periodic review of the Scottsbluff Railroad Quiet Zones covering the crossings of the BNSF at 9<sup>th</sup> Avenue, 5<sup>th</sup> Avenue, Broadway, Avenue B, W. 20<sup>th</sup> Street, and Avenue I respectively. This Scope of Services assumes that FHU provides the necessary documentation for the City of Scottsbluff to coordinate with the FRA, BNSF, and NDOT.

The tasks below describe the engineering services to be provided by Felsburg Holt & Ullevig (FHU) to the City of Scottsbluff for maintaining the Quiet Zone in Scottsbluff. This scope of services consists of the reviewing existing and city furnished documents, as well as preparing notices to the agencies. It does not include on-site visits to the crossings.

#### **TASK 1. Project Management**

- a. Project Management - The FHU Project Manager will serve as point of contact, maintain project schedule and budget, and provide regular progress reports with invoices.

#### **TASK 2. Meetings**

- a. Kick-Off Meeting - FHU will schedule a kick-off meeting by phone or Skype with City of Scottsbluff staff and engineers at the initiation of the project. No on-site meetings are planned as part of this scope.

#### **TASK 3. Document Review**

- a. FHU will review the FRA website for existing inventory data and crash records.
- b. FHU will examine the as-built plans, crossing approach photographs, field checklists, and Notices of Quiet Zone Establishment supplied by the City for compliance with the latest FRA regulations and interpretations.
- c. FHU will review the on-site field review conducted by the City Engineer staff and measurements for condition of the Supplementary Safety Measures and related traffic control.
- d. The City will conduct or furnish NDOT 24-hour traffic counts to FHU at each crossing.

#### **TASK 4. Submittals**

- a. FHU will prepare the Notice of Affirmation to Retain an Existing Quiet Zone, Chief Executive Officer(s) Statements, and updated inventory sheets for each crossing in appropriate form for submittal to the BNSF, FRA, and NDOT.
- b. FHU would also be available for consultation and submittals with agencies regarding potential compliance issues as a supplemental service at our standard hourly rates.

### **City Responsibilities**

The City will supply the following information within 14 days of Notice to Proceed to discuss during the kick-off meeting:

- Copies of any available as-built plans
- 24-hour traffic counts including those taken by NDOT in 2018
- The 2014 Notice of Intent (NOI) and Notice of Quiet Zone Establishment (NQZE)

- Photographs (10) at each crossing per NDOT's *Crossing Inventory Photo Sequence*.
- Completed FHU furnished checklists of quiet zone and inventory requirements

### Project Schedule

Upon receipt of a signed agreement, FHU will begin working on this assignment. We will complete and submit the draft documents for the Scottsbluff Quiet Zone within 30 calendar days after holding the kick-off meeting. This schedule is based on a period of 14 days for the City to provide the documents listed above after the Notice to Proceed.

### Project Fee Estimate

We propose to conduct these services on a Cost Plus Fixed Fee basis, with other direct costs, such as printing reimbursed at a rate of 1.1 times actual cost. At our standard hourly rates, we estimate that the services associated with reviewing the crossing safety measures could be completed for a maximum fee of \$6,350. This amount would be established as a "not to exceed" limit beyond which no charges could be made without the City's prior written approval.

We appreciate the opportunity to provide this service to the City of Scottsbluff. We look forward to assisting you in the retention of both the safety and quality of life provided by these quiet zones. If you have any questions, please do not hesitate to contact us.

Sincerely,

FELSBURG HOLT & ULLEVIG

  
Kyle A. Anderson, PE, PTOE  
Executive Vice President

  
Rick Haden  
Project Manager

\_\_\_\_\_  
Approved by City of Scottsbluff

\_\_\_\_\_  
Date



## Letter Agreement Standard Provisions

### A. SERVICES BY THE CONSULTANT

The **CONSULTANT** agrees to perform all services, hereunder, using reasonable skill and judgment in accordance with applicable professional standards. **CONSULTANT** agrees to keep the **CLIENT** informed on its progress through periodic reports, and to maintain accurate records relating to its services for this project.

The **CONSULTANT** agrees to provide, directly or by association with such other Consultants or Contractors as it may deem necessary to further the interest of the **CLIENT**, the basic services as described in the Scope of Work provided in the signed Letter Proposal or Letter Agreement.

### B. RESPONSIBILITIES OF THE CLIENT

The **CLIENT** shall provide and make available to the **CONSULTANT**, for his use, all maps, property descriptions, surveys, previous reports, historical data, and other information within its knowledge and possession relative to the services to be furnished hereunder. Data so furnished to the **CONSULTANT** shall remain the property of the **CLIENT** and will be returned upon completion of its services.

The **CLIENT** shall make provisions for the **CONSULTANT** to enter upon public and private properties as required for the **CONSULTANT** to perform its services hereunder.

### C. EXTRA WORK

The **CLIENT** may desire to have the **CONSULTANT** perform work or render services other than those provided in Scope of Work. This will be Extra Work. Work shall not proceed until so authorized by the **CLIENT**. Payment for all work under this Agreement shall be on an hourly basis plus expenses in accordance with the attached rate schedule. Charges for outside services, expenses, and subconsultant work will be billed at 1.10 times the invoice amount.

### D. TIME OF BEGINNING AND COMPLETION

Execution of the Letter Proposal is authorization by the **CLIENT** for the **CONSULTANT** to proceed with the work (Time of Beginning). The original Time of Completion is as noted in the Letter Agreement.

### E. PAYMENT

Unless otherwise provided herein, **CONSULTANT** shall submit monthly invoices for Basic, Additional or Special Services and for Reimbursable Expenses each month for work that has been performed. If hourly, invoices will be based on labor and expenses incurred. If lump sum, invoices will be based on the percentage of work completed.

Payments not made within 60 days of the billing date shall bear interest at the rate of 1% per month which is an annual interest rate of 12%. If any portion of, or an entire account remains unpaid 90 days after billing, the **CLIENT** shall pay all costs of collection, including reasonable attorney's fees.

### F. DELAYS

If the **CONSULTANT** is delayed at any time in the progress of work by any act or neglect of the **CLIENT** or its agents, employees or contractors, or by changes in the work, or by

extended reviews by the **CLIENT**, fire, unavoidable casualties, or by any causes beyond the **CONSULTANT'S** control, the time schedule shall be extended for a reasonable length of time, and **CONSULTANT'S** compensation may be subject to renegotiation for increased expenses due to escalation of prices, extended services, rework, and/or other expenses incidental to such delays.

### G. OWNERSHIP OF DOCUMENTS

All drawings, specifications, reports, records, and other work products developed by the **CONSULTANT** associated with this project are instruments of service for this project only and shall remain the property of the **CONSULTANT** whether the project is completed or not. The **CONSULTANT** shall furnish originals or copies of such work product to the **CLIENT** in accordance with the services required hereunder. Reuse of any of the work product of the **CONSULTANT** by the **CLIENT** on an extension of this project or on any other project without the written permission of the **CONSULTANT** shall be at the **CLIENT'S** risk and the **CLIENT** agrees to defend, indemnify, and hold harmless the **CONSULTANT** from all claims, damages, and expenses including attorney's fees arising out of such unauthorized reuse by the **CLIENT** or by others acting through the **CLIENT**. Any reuse or adaptation of the **CONSULTANT'S** work product shall entitle the **CONSULTANT** to equitable compensation.

### H. INSURANCE

During the course of the services, the **CONSULTANT** shall maintain Workmen's Compensation Insurance in accordance with the Workmen's Compensation laws of the State of Nebraska; Professional Liability Insurance with a minimum coverage of \$1,000,000 per occurrence, \$2,000,000 aggregate; Automobile Liability with a combined single limit coverage of \$1,000,000; and Commercial General Liability of \$1,000,000 per occurrence, \$2,000,000 aggregate. Upon request, the **CONSULTANT** shall provide certificates of insurance to the **CLIENT** indicating compliance with this paragraph.

### I. TERMINATION

Either the **CLIENT** or the **CONSULTANT** may terminate this Agreement at any time with or without cause upon giving the other party fourteen (14) calendar days prior written notice. The **CLIENT** shall within sixty (60) calendar days of termination pay the **CONSULTANT** for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this contract.

### J. DISPUTES

Any claim, dispute, or other matter in question between the **CLIENT** and the **CONSULTANT**, arising out of or relating to either's obligations to the other under this Agreement, shall, if possible, be resolved by negotiation between the **CLIENT'S** representative and the **CONSULTANT** Principal-in-Charge for the Project. **CLIENT** and **CONSULTANT** each commit to seeking resolution of such matters in an amicable, professional, and expeditious manner. If a matter cannot be resolved by these parties, no later than thirty (30) calendar days after either party submits an issue in writing for resolution,





representatives from executive management of the **CLIENT** and **CONSULTANT** shall attempt to resolve the matter through additional good faith negotiations. If resolution cannot be reached within an additional thirty (30) calendar days, the **CLIENT** and **CONSULTANT** agree that all such unresolved disputes shall be submitted to nonbinding mediation.

Pending final resolution of the dispute, the **CONSULTANT** shall proceed diligently with the performance of the Basic Services as described in Article A, as directed by the **CLIENT**, and the **CLIENT** shall continue to pay the undisputed payments due to the **CONSULTANT** for such services in accordance with the payment provisions of this Agreement.

#### **K. GOVERNING LAW**

Unless otherwise agreed in writing, this Agreement and the interpretation thereof shall be governed by the law of the State of Nebraska.

#### **L. SUCCESSORS AND ASSIGNS**

The **CLIENT** and the **CONSULTANT** each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party with respect to all covenants of this Agreement. Neither party shall assign or transfer its interest in this Agreement without the written consent of the other.

#### **M. EXTENT OF AGREEMENT**

This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations and representations. Nothing herein shall be deemed to create any contractual relationship between the **CONSULTANT** and any other consulting business, or contractor, or material supplier on the project, nor obligate it to furnish any notices required under other such contracts, nor shall anything herein be deemed to give anyone not a party to this Agreement any right of action against a party which does not otherwise exist without regard to this Agreement.

#### **N. NOTICES**

All notices and instructions given by either party to the other shall be in writing, and shall be deemed to be properly served if delivered to the address of record shown below, or if deposited in the United States Mail properly stamped with the required postage and addressed to such party at the address in the Letter Proposal or Letter Agreement. The date of service of a notice sent by mail shall be deemed to be the day following the date on which said notice is so deposited. Either party hereto shall have the right to change its address by giving the other party written notice thereof.

#### **O. ACCURACY OF SERVICES AND LIMITATION OF LIABILITY**

The **CONSULTANT** shall use reasonable professional skill and judgment in providing the services, hereunder, but does not warrant that such services are without errors and/or omissions. If, during the authorized use and prudent interpretation of documents or advice furnished by the **CONSULTANT**, an error or omission is discovered within a reasonable time, the **CONSULTANT** shall be responsible for correction of any work which must be removed or altered to meet the project requirements, provided the **CONSULTANT** is given a

reasonable opportunity to make remedial recommendations and to correct or arrange for the correction of the work itself. The **CONSULTANT** will not be liable for the cost of procurement of work or services performed in correcting such errors and/or omissions where such work or services result in a value to the Project over and above that which the original work or services provided.

In providing opinions of probable construction cost, the **CLIENT** understands that the **CONSULTANT** has no control over costs or the price of labor, equipment, or materials, or the Contractor's method of pricing, and that the opinions of probable construction costs provided herein are to be made based on the **CONSULTANT'S** qualifications, and experience. The **CONSULTANT** makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

The **CONSULTANT** agrees, to the fullest extent permitted by law, to indemnify and hold the **CLIENT** harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the **CONSULTANT'S** negligent acts, errors or omissions in the performance of professional services under this Agreement and those of his or her subconsultants or anyone for whom the **CONSULTANT** is legally liable.

The **CLIENT** agrees, to the fullest extent permitted by law, to indemnify and hold the **CONSULTANT** harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the **CLIENT'S** negligent acts, errors or omissions and those of his or her contractors, subcontractors or consultants or anyone for whom the **CLIENT** is legally liable, and arising from the project that is the subject of this Agreement. **CLIENT'S** amount of indemnity or costs incurred in providing the indemnity shall be limited to the same amount as the **CONSULTANT'S** liability is listed below.

As negotiated as a part of this Agreement, to the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of the **CONSULTANT** and the **CONSULTANT'S** officers, directors, partners, employees, agents and subconsultants, to the **CLIENT** and anyone claiming by, through or under the **CLIENT**, for any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract or warranty, express or implied, of the **CONSULTANT** or the **CONSULTANT'S** officers, directors, employees, agents or subconsultants, or any of them, shall not exceed the total amount of \$100,000.

Upon execution of the Letter Agreement or Letter Proposal, the **CLIENT** thereby agrees to the terms of these Special Provisions.





# Railroad Quiet Zone 4.5-5 Year Affirmation City of Scottsbluff, NE

Felsburg Holt & Ullevig

Attachment C

1/4/2019

ACTIVITIES	Person Hours By Task					Total	Fee
	PR	PM	Engr.	Sr. Des.	Admin.		
<b>1- Project Management</b>	1	3			1	5	\$925
<b>2- Kick-Off Meeting</b> Discuss Background Data, Plans & Traffic Counts		2				2	\$400
<b>3- Document &amp; Crossing Field Review</b> Review Construction Plans (6)		2		2		4	\$690
Review Photos & Crossings Notes for Compliance		3		2		5	\$890
Review FRA Inventory & Crash Records		2				2	\$400
<b>Subtotal SSM Review</b>							<u>\$1,980</u>
<b>4- Coordination City, FRA, BNSF, &amp; NDOT</b> Review RQZE Documents & Agreements		3				3	\$600
Prepare QZ Affirmation & Executive Statement	1	6	2			9	\$1,815
Update Inventory Sheets		3				3	\$600
<b>Subtotal Coordination</b>							<u>\$3,015</u>
<b>TOTAL HOURS</b>	2	24	2	4	1	33	\$6,320
Billing Rates	\$235.00	\$200.00	\$190.00	\$145.00	\$90.00		
Total Salaries	\$470	\$4,800	\$380	\$580	\$90	\$6,320	

## DIRECT PROJECT EXPENSES ITEM

Mileage- (400 miles Lincoln - Scottsbluff) 0 trips		\$0.545	\$0
Printing, Postage/Shipping			\$30
Lodging- 1 night	0	\$96	\$0
<b>TOTAL DIRECT PROJECT EXPENSES</b>			<u>\$30</u>
<b>MAXIMUM AMOUNT PAYABLE</b>			<u>\$6,350</u>