City of Carroll

112 E. 5th Street Carroll, Iowa 51401-2799 (712) 792-1000 FAX: (712) 792-0139

MEMO TO: Mike Pogge-Weaver, City Manager MPW

FROM: Randall M. Krauel, Public Works Director RMK

DATE: April 17, 2021

SUBJECT: Quiet Zone Study Update

On January 11, 2021, the Quiet Zone Study Update discussion was postponed until a later meeting. A Quiet Zone Study Update Agreement for Professional Services with Bolton & Menk, Inc. is attached.

The Agreement includes Study updates at the following street-railroad crossings:

Bella Vista Drive
N. Grant Road
N. Maple Street
N. Clark Street
N. Main Street
N. Carroll Street
Burgess Avenue

The Agreement terms are detailed in the attached. The Scope of Services is summarized as follows:

Task 1 – Crossing Review

1.1 Crossing Field Review
1.2 FRA Data Crossing Review
1.3 Traffic Data Review

Task 2 – Report Updates

2.1 Kickoff Meeting
2.2 Report Updates
2.3 Layout Updates
2.4 FRA & UPRR Coordination
2.5 Opinion of Probable Construction Cost Updates
2.6 Final Report

The changes to the January 11, 2021, proposed Agreement that are included in the attached, April 12, 2021, Agreement are as follows:

- Agreement date

- Exhibit 1, Item 2.4 FRA & UPRR Coordination. UPRR initial cost for a preliminary engineering agreement is increased from an estimated up-to-$25,000 to an estimated up-to-$40,000. The increase is a result of Bolton & Menk, Inc. recent experience working with another client on quiet zone establishment. If establishment of a quiet zone is pursued, construction plans would be prepared by the City and consultant for the selected safety measures. Those plans would be reviewed by the UPRR under the preliminary engineering agreement.

- Exhibit 1, Schedule – The following schedule has been added:

Review of Crossings, FRA & Traffic Data	May, 2021
Kickoff Meeting	May, 2021
Report Updates	May-June, 2021
Layout Updates	May-June, 2021
Opinion of Probable Cost Updates	May-June, 2021
Final Report – Submit to City	July 23, 2021
Final Report – City Review & Meetings	August-September 2021
Final Report	2 weeks from return

Estimated Fees for the Updates are hourly basis, not to exceed without prior consent, as follows:

1.0 Crossing Review	$4,450.00
2.0 Report Updates	$15,700.00
Hourly (Estimated Cost to Complete)	$20,150.00

Discussion on January 11, 2021, included concern over the amount of the fees included in the Agreement. Bolton & Menk, Inc. has agreed to review the fees in conjunction with any desired change in the proposed Scope of Services. At this time, it appears that the proposed Scope of Services reasonably includes desired expectations of the Study Update.

Funding for the Study Update in the amount of $20,150.00 is re-estimated from Local Option Sales Tax for the current Fiscal Year in the F.Y. 21-22 Budget.

RECOMMENDATION: Mayor and City Council consideration of passage and approval of the Resolution approving the Professional Services Agreement with Bolton & Menk, Inc. for the Quiet Zone Study Update at an estimated cost, based on hourly rates, not to exceed $20,150.00 without prior consent.

RMK:ds

attachments (2)

RESOLUTION NO. _____

RESOLUTION APPROVING AN AGREEMENT WITH BOLTON & MENK, INC. FOR PROFESSIONAL SERVICES FOR THE QUIET ZONE STUDY UPDATE.

WHEREAS, Chapter 17 of the Code of Ordinances of the City of Carroll, Iowa, provides that contracts made by the City be approved by the City Council; and,

WHEREAS, a Professional Services Agreement for the Quiet Zone Study Update has been prepared with Bolton & Menk, Inc.; and,

WHEREAS, the City Council has determined that the Professional Services Agreement is in the best interests of the City and the residents thereof.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Carroll, Iowa, that the Professional Services Agreement with Bolton & Menk, Inc. for the Quiet Zone Study Update is approved and the Mayor is authorized and directed to sign the Agreement on behalf of the City.

Passed and approved on this 12th day of April, 2021.

CITY COUNCIL OF THE
CITY OF CARROLL, IOWA

By: _____
Eric P. Jensen, Mayor

ATTEST:

By: _____
Laura A. Schaefer, City Clerk

AGREEMENT FOR PROFESSIONAL SERVICES

QUIET ZONE STUDY UPDATES PROJECT

CITY OF CARROLL, IA and BOLTON & MENK, INC.

This Agreement, made this 12th day of April 2021, by and between the City of Carroll, 627 N. Adams St., Carroll, IA 51401 ("CLIENT"), and BOLTON & MENK, INC., 300 W. McKinley St., Jefferson, IA 50129 ("CONSULTANT").

WITNESS, whereas the CLIENT requires professional services in conjunction with Quiet Zone Study Updates project to update information and cost opinions for proposed quiet zone improvements within the City of Carroll for the future establishment of a Quiet Zone ("Project") and whereas the CONSULTANT agrees to furnish the various professional services required by the CLIENT.

NOW, THEREFORE, in consideration of the mutual covenants and promises between the parties hereto, it is agreed:

SECTION I - CONSULTANT'S SERVICES

A. The CONSULTANT agrees to perform the various Basic Services in connection with the proposed project as described in Exhibit I.

B. Upon mutual agreement of the parties, Additional Services may be authorized as described in Paragraph IV.B.

SECTION II - THE CLIENT'S RESPONSIBILITIES

A. The CLIENT shall promptly compensate the CONSULTANT in accordance with Section III of this Agreement.

B. The CLIENT shall place any and all previously acquired information in its custody at the disposal of the CONSULTANT for its use. Such information shall include, but not limited to: boundary surveys, topographic surveys, preliminary sketch plan layouts, building plans, soil surveys, abstracts, deed descriptions, tile maps and layouts, aerial photos, utility agreements, environmental reviews, and zoning limitations. The CONSULTANT may rely upon the accuracy and sufficiency of all such information in performing services unless otherwise instructed, in writing, by CLIENT.

C. The CLIENT will guarantee access to and make all provisions for entry upon public portions of the project and reasonable efforts to provide access to private portions and pertinent adjoining properties.

D. The CLIENT will give prompt notice to the CONSULTANT whenever the CLIENT observes or otherwise becomes aware of any defect in the proposed project.

E. The CLIENT shall designate a liaison person to act as the CLIENT'S representative with respect to services to be rendered under this Agreement. Said representative shall have the authority to transmit instructions, receive instructions, receive information, interpret and define the CLIENT'S policies with respect to the project and CONSULTANT'S services.

F. The CONSULTANT'S services do not include legal, insurance counseling, accounting, independent cost estimating, financial advisory or "municipal advisor" (as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act 2010 and the municipal advisor registration rules issued by the SEC) professional services and the CLIENT shall provide such services as may be required for completion of the Project described in this Agreement.

G. The CLIENT will obtain any and all regulatory permits required for the proper and legal execution of the Project. CONSULTANT will assist CLIENT with permit preparation and documentation to the extent described in Exhibit I.

H. The CLIENT may hire, at its discretion, when requested by the CONSULTANT, an independent test company to perform laboratory and material testing services, and soil investigation that can be justified for the proper design and construction of the Project. The CONSULTANT shall assist the CLIENT in selecting a testing company. Payment for testing services shall be made directly to the testing company by the CLIENT and is not part of this Agreement. If CLIENT elects not to hire an independent test company, CLIENT shall provide CONSULTANT with guidance and direction on completing those aspects of design and construction that require additional testing data.

(Remainder of this page intentionally left blank)

SECTION III - COMPENSATION FOR SERVICES

A. FEES.

1. The CLIENT will compensate the CONSULTANT in accordance with the following Schedule of Fees for the time spent in performance of Agreement services. Total cost of services shall not exceed $__20,150.00__ without the prior consent of CLIENT.

Schedule of Fees

Employee Classification	Hourly Billing Rates
Senior Principal	$230-290/Hour
Principal Engineer/Surveyor/Planner/GIS/Landscape Architect	$150-225
Senior Engineer/Surveyor/Planner/GIS/Landscape Architect	$130-220
Project Manager (Inc. Survey, GIS, Landscape Architect)	$130-215
Project Engineer/Surveyor/Planner/Landscape Architect	$70-185
Design Engineer/Landscape Designer/Graduate Engineer/Surveyor	$90-190
Specialist (Nat. Resources, GIS, Traffic, Graphics, Other)	$70-175
Senior Technician (Inc. Construction, GIS, Survey[1])	$90-180
Technician (Inc. Construction, GIS, Survey[1])	$65-160
Administrative/Corporate Specialists	$60-140
Structural/Electrical/Mechanical/Architect	$120-175
GPS/Robotic Survey Equipment	NO CHARGE
CAD/Computer Usage	NO CHARGE
Routine Office Supplies	NO CHARGE
Routine Photo Copying/Reproduction	NO CHARGE
Field Supplies/Survey Stakes & Equipment	NO CHARGE
Mileage	NO CHARGE

[1] No separate charges will be made for GPS or robotic total stations on Bolton & Menk, Inc. survey assignments; the cost of this equipment is included in the rates for Survey Technicians.

2. The preceding Schedule of Fees shall apply for services provided through December 31, 2021. Hourly rates may be adjusted by CONSULTANT, in consultation with CLIENT, on an annual basis thereafter to reflect reasonable changes in its operating costs. Adjusted rates will become effective on January 1st of each subsequent year, upon written acceptance by CLIENT.

3. Rates and charges do not include sales tax. If such taxes are imposed and become applicable after the date of this Agreement CLIENT agrees to pay any applicable sales taxes.

4. The rates in the Schedule of Fees include labor, general business and other normal and customary expenses associated with operating a professional business. Unless otherwise agreed in writing, the above rates include vehicle and personal expenses, mileage, telephone, survey stakes and routine expendable supplies; and no separate charges will be made for these activities and materials.

5. Additional services as outlined in Section I.B will vary depending upon project conditions and will be billed on an hourly basis at the rate described in Section III.A.1.

6. Expenses required to complete the agreed scope of services or identified in this paragraph will be invoiced separately, and include but are not limited to large quantities of prints; extra report copies; out-sourced graphics and photographic reproductions; document recording fees; special field and traffic control equipment rental; outside professional and technical assistance; geotechnical services; and other items of this general nature required by the CONSULTANT to fulfill the terms of this Agreement. CONSULTANT shall be reimbursed at cost plus an overhead fee (not-to-exceed 10%) for these Direct Expenses incurred in the performance of the work, subject to the Total cost not to exceed fee or approved Additional services.

B. PAYMENTS AND RECORDS

1. The payment to the CONSULTANT will be made by the CLIENT upon billing at intervals not more often than monthly at the herein rates and terms.

2. If CLIENT fails to make any payment due CONSULTANT for undisputed services and expenses within 45 days after date of the CONSULTANT'S invoice, a service charge of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is less, will be charged on any unpaid balance.

3. In addition to the service charges described in preceding paragraph, if the CLIENT fails to make payment for undisputed services and expenses within 60 days after the date of the invoice, the CONSULTANT may, upon giving seven days' written notice to CLIENT, suspend services and withhold project deliverables due under this Agreement until CONSULTANT has been paid in full for all past due amounts for undisputed services, expenses and charges, without waiving any claim or right against the CLIENT and without incurring liability whatsoever to the CLIENT.

4. Documents Retention. The CONSULTANT will maintain records that reflect all revenues, costs incurred and services provided in the performance of the Agreement. The CONSULTANT will also agree that the CLIENT, State, or their duly authorized representatives may, at any time during normal business hours and as often as reasonably necessary, have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., and accounting procedures and practices of the CONSULTANT which are relevant to the contract for a period of six years.

(Remainder of this page intentionally left blank)

SECTION IV - GENERAL

A. STANDARD OF CARE

Professional services provided under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the CONSULTANT'S profession currently practicing under similar conditions. No warranty, express or implied, is made.

B. CHANGE IN PROJECT SCOPE

In the event the CLIENT changes or is required to change the scope or duration of the project from that described in Exhibit I, and such changes require Additional Services by the CONSULTANT, the CONSULTANT shall be entitled to additional compensation at the applicable hourly rates. To the fullest extent practical, the CONSULTANT shall give notice to the CLIENT of any Additional Services, prior to furnishing such Additional Services. The CONSULTANT shall furnish an estimate of additional cost, prior to authorization of the changed scope of work and Agreement will be revised in writing.

C. LIMITATION OF LIABILITY

1. General Liability of CONSULTANT. For liability other than professional acts, errors, or omissions, and to the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CLIENT from losses, damages, and judgments (including reasonable attorneys' fees and expenses of litigation) arising from claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, but only to the extent caused by the acts and omissions in the non-professional services of CONSULTANT or CONSULTANT'S employees, agents, or subconsultants.

2. Professional Liability of CONSULTANT. With respect to professional acts, errors and omissions and to the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless CLIENT from losses, damages, and judgments (including reasonable attorneys' fees and expenses of litigation) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, but only to the extent caused by a negligent act, error or omission of CONSULTANT or CONSULTANT'S employees, agents, or subconsultants. This indemnification shall include reimbursement of CLIENT'S reasonable attorneys' fees and expenses of litigation, but only to the extent that defense is insurable under CONSULTANT's liability insurance policies.

3. General Liability of Client. To the fullest extent permitted by law, CLIENT shall indemnify, defend and hold harmless CONSULTANT from losses, damages, and judgments (including reasonable attorneys' fees and expenses of litigation) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, but only to the extent caused by the acts or omission of CLIENT or CLIENT'S employees, agents, or other consultants.

4. 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 entity shall have any claim against the CONSULTANT because of this Agreement or the performance or nonperformance of services provided hereunder.

D. INSURANCE

1. The CONSULTANT agrees to maintain, at CONSULTANT'S expense a commercial general liability (CGL) and excess or umbrella general liability insurance policy or policies insuring CONSULTANT against claims for bodily injury, death or property damage arising out of CONSULTANT'S general business activities. The general liability coverage shall provide limits of not less than $2,000,000 per occurrence and not less than $2,000,000 general aggregate. Coverage shall include Premises and Operations Bodily Injury and Property Damage; Personal and Advertising Injury; Blanket Contractual Liability; Products and Completed Operations Liability.

2. The CONSULTANT also agrees to maintain, at CONSULTANT'S expense, a single limit or combined limit automobile liability insurance and excess or umbrella liability policy or policies insuring owned, non-owned and hired vehicles used by CONSULTANT under this Agreement. The automobile liability coverages shall provide limits of not less than $1,000,000 per accident for property damage, $2,000,000 for bodily injuries, death and damages to any one person and $2,000,000 for total bodily injury, death and damage claims arising from one accident.

3. CLIENT shall be named Additional Insured for the above CGL and Auto liability policies.

4. The CONSULTANT agrees to maintain, at the CONSULTANT'S expense, statutory worker's compensation coverage together with Coverage B, Employer's Liability limits of not less than $500,000 for Bodily Injury by Disease per employee, $500,000.00 for Bodily Injury by Disease aggregate and $500,000 for Bodily Injury by Accident.

5. The CONSULTANT also agrees to maintain, at CONSULTANT'S expense, Professional Liability Insurance coverage insuring CONSULTANT against damages for legal liability arising from a negligent act, error or omission in the performance of professional services required by this Agreement during the period of CONSULTANT'S services and for three years following date of final completion of its services. The professional liability insurance coverage shall provide limits of not less than $2,000,000 per claim and an annual aggregate of not less than $2,000,000 on a claims-made basis.

6. CLIENT shall maintain statutory Workers Compensation insurance coverage on all of CLIENT'S employees and other liability insurance coverage for injury and property damage to third parties due to the CLIENT'S negligence.

7. Prior to commencement of this Agreement, CONSULTANT will provide the CLIENT with certificates of insurance, showing evidence of required coverages. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement for any reason except non-payment of premium, until at least 30 days prior written notice has been given to the Certificate Holder, and at least 10 days prior written notice in the case of non-payment of premium.

E. OPINIONS OR ESTIMATES OF CONSTRUCTION COST

Where provided by the CONSULTANT as part of Exhibit I or otherwise, opinions or estimates of construction cost will generally be based upon public construction cost information. Since the CONSULTANT has no control over the cost of labor, materials, competitive bidding process, weather conditions and other factors affecting the cost of construction, all cost estimates are opinions for general information of the CLIENT and the CONSULTANT does not warrant or guarantee the accuracy of construction cost opinions or estimates. The CLIENT acknowledges that costs for project financing should be based upon contracted construction costs with appropriate contingencies.

F. CONSTRUCTION SERVICES

It is agreed that the CONSULTANT and its representatives shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall CONSULTANT have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at any Project site, nor for any failure of a Contractor to comply with Laws and Regulations applicable to that Contractor's furnishing and performing of its work. CONSULTANT shall not be responsible for the acts or omissions of any Contractor. CLIENT acknowledges that on-site contractor(s) are solely responsible for construction site safety programs and their enforcement.

G. USE OF ELECTRONIC/DIGITAL DATA

1. Because of the potential instability of electronic/digital data and susceptibility to unauthorized changes, copies of documents that may be relied upon by CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by CONSULTANT. Except for electronic/digital data which is specifically identified as a project deliverable for this Agreement or except as otherwise explicitly provided in this Agreement, all electronic/digital data developed by the CONSULTANT as part of the Project is acknowledged to be an internal working document for the CONSULTANT'S purposes solely and any such information provided to the CLIENT shall be on an "AS IS" basis strictly for the convenience of the CLIENT without any warranties of any kind. As such, the CLIENT is advised and acknowledges that use of such information may require substantial modification and independent verification by the CLIENT (or its designees).

2. Provision of electronic/digital data, whether required by this Agreement or provided as a convenience to the Client, does not include any license of software or other systems necessary to read, use or reproduce the information. It is the responsibility of the CLIENT to verify compatibility with its system and long-term stability of media. CLIENT shall indemnify and hold harmless CONSULTANT and its Subconsultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting from third party use or any adaptation or distribution of electronic/digital data provided under this Agreement, unless such third-party use and adaptation or distribution is explicitly authorized by this Agreement.

H. REUSE OF DOCUMENTS

1. Drawings and Specifications and all other documents (including electronic and digital versions of any documents) prepared or furnished by CONSULTANT pursuant to this Agreement are instruments of service in respect to the Project and CONSULTANT shall retain an ownership interest therein. Upon payment of all fees owed to the CONSULTANT, the CLIENT shall acquire a limited license in all identified deliverables (including Reports, Plans and Specifications) for any reasonable use relative to the Project and the general operations of the CLIENT. Such limited license to Owner shall not create any rights in third parties.

2. CLIENT may make and disseminate copies for information and reference in connection with the use and maintenance of the Project by the CLIENT. However, such documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or on any other project. Any reuse by CLIENT or, any other entity acting under the request or direction of the CLIENT, without written verification or adaptation by CONSULTANT for such reuse will be at CLIENT'S sole risk and without liability or legal exposure to CONSULTANT and CLIENT shall indemnify and hold harmless CONSULTANT from all claims, damages, losses and expenses including attorney's fees arising out of or resulting from such reuse.

I. CONFIDENTIALITY

CONSULTANT agrees to keep confidential and not to disclose to any person or entity, other than CONSULTANT'S employees and subconsultants any information obtained from CLIENT not previously in the public domain or not otherwise previously known to or generated by CONSULTANT. These provisions shall not apply to information in whatever form that comes into the public domain through no fault of CONSULTANT; or is furnished to CONSULTANT by a third party who is under no obligation to keep such information confidential; or is information for which the CONSULTANT is required to provide by law or authority with proper jurisdiction; or is information upon which the CONSULTANT must rely for defense of any claim or legal action.

J. PERIOD OF AGREEMENT

This Agreement will remain in effect for the longer of a period of two (2) years or until such other expressly identified completion date, after which time the Agreement may be extended upon mutual agreement of both parties.

K. TERMINATION

This Agreement may be terminated:

1. For cause, by either party upon 7 days written notice in the event of substantial failure by other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. For termination by CONSULTANT, cause includes, but is not limited to, failure by CLIENT to pay undisputed amounts owed to CONSULTANT within 120 days of invoice and delay or suspension of CONSULTANT's services for more than 120 days for reasons beyond CONSULTANT'S cause or control; or,

2. For convenience by CLIENT upon 7 days written notice to CONSULTANT.

3. Notwithstanding, the foregoing, this Agreement will not terminate under paragraph IV.K if the party receiving such notice immediately commences correction of any substantial failure and cures the same within 10 days of receipt of the notice.

4. In the event of termination by CLIENT for convenience or by CONSULTANT for cause, the CLIENT shall be obligated to the CONSULTANT for payment of amounts due and owing including payment for services performed or furnished to the date and time of termination, computed in accordance with Section III of this Agreement. CONSULTANT shall deliver and CLIENT shall have, at its sole risk, right of use of any completed or partially completed deliverables, subject to provisions of Paragraph IV. H.

5. In event of termination by CLIENT for cause and in addition to any other remedies available to CLIENT, CONSULTANT shall deliver to CLIENT and CLIENT shall have right of use of any completed or partially completed deliverables, in accordance with the provisions of Paragraph IV.H. CLIENT shall compensate CONSULTANT for all undisputed amounts owed CONSULTANT as of date of termination.

L. INDEPENDENT CONTRACTOR

Nothing in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting the CONSULTANT or any of its employees as the agent, representative, or employee of the CLIENT for any purpose or in any manner whatsoever. The CONSULTANT is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

M. CONTINGENT FEE

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from award or making of this Agreement.

N. NON-DISCRIMINATION

The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Agreement as if fully set forth herein. **The CONSULTANT is an Equal Opportunity Employer** and it is the policy of the CONSULTANT that all employees, persons seeking employment, subcontractors, subconsultants and vendors are treated without regard to their race, religion, sex, color, national origin, disability, age, sexual orientation, marital status, public assistance status or any other characteristic protected by federal, state or local law.

O. ASSIGNMENT

Neither party shall assign or transfer any interest in this Agreement without the prior written consent of the other party.

P. SURVIVAL

All obligations, representations and provisions made in or given in Section IV and Documents Retention clause of this Agreement will survive the completion of all services of the CONSULTANT under this Agreement or the termination of this Agreement for any reason.

Q. SEVERABILITY

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CLIENT and CONSULTANT, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

R. CONTROLLING LAW

This Agreement is to be governed by the law of the State of Iowa and venued in courts of Iowa; or at the choice of either party, and if federal jurisdictional requirements can be met, in federal court in the district in which the project is located.

S. DISPUTE RESOLUTION

CLIENT and CONSULTANT agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law. Any claims or disputes unresolved after good faith negotiations shall then be submitted to mediation using a neutral from the American Arbitration Association Construction Industry roster. If mediation is unsuccessful in resolving the dispute, then either party may seek to have the dispute resolved by bringing an action in a court of competent jurisdiction.

(Remainder of this page intentionally left blank)

SECTION V - SIGNATURES

THIS INSTRUMENT embodies the whole agreement of the parties, there being no promises, terms, conditions or obligation referring to the subject matter other than contained herein. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their behalf.

CLIENT: City of Carroll	CONSULTANT: Bolton & Menk, Inc.
	Matthew W. Ferrier
Signature	Signature
	Matthew W. Ferrier, Principal In Charge
Print Name and Title	Print Name and Title
	April 12, 2021
Date	Date

BOLTON & MENK
Real People. Real Solutions.

300 W McKinley Street
PO Box 68
Jefferson, IA 50129

Ph: (515) 386-4101
Bolton-Menk.com

EXHIBIT 1 – Revised

CONSULTANT SERVICES

QUIET ZONE STUDY UPDATES REPORT
CARROLL, IOWA

SCOPE OF SERVICES
The Consultant agrees to provide professional services required for the Quiet Zone Study Updates Project including the following street and railroad crossings:

- Bella Vista Road
- N. Grant Road
- N. Maple Street
- N. Clark Street
- N. Main Street
- N. Carroll Street
- Burgess Avenue

BASIC SERVICES
For purposes of this Project, Basic Services to be provided by the CONSULTANT are as follows:

Task 1 – Crossing Review

1.1 Crossing Field Review

Bolton & Menk will review each of the seven crossings within the proposed quiet zone. This review will compare the current conditions of the crossings to the condition at the time of the initial report. We will look for changes to the crossing materials and length, road conditions, sidewalk and ADA compliance issues, and adjacent land uses that may impact the proposed design layouts.

Normally the investigation is completed by using the City or County base map aerial photography with property line overlays along with a site visit. These maps are used to investigate alternatives, verify land use, identify driveway locations, verify adjacent parking use and determine clear zone requirements. The client will be required to provide updated aerials and property lines for our use.

The review of these crossings is best completed when conditions are clear and unobstructed, so it is the intent of this scope that the reviews be completed at a time when snow and ice and other adverse conditions are not present. However, review of the sites can be completed at the direction and schedule of the City although completion of this task during adverse conditions may adversely affect our ability to obtain all possible information.

1.2 FRA Data Crossing Review

We will review the Federal Rail Administration (FRA) crossing inventory and accident history for the rail corridor.

1.3 Traffic Data Review

Traffic volumes will be obtained from the IADOT and from the City of Carroll for the crossings within the corridor.

Task 2 – Report Updates

2.1 Kickoff Meeting

Bolton & Menk will facilitate a meeting with our project manager, design engineer and City staff to introduce parties, review the scope of work, verify schedule and obtain data from the City. We will discuss adjacent land uses and impacts the potential project could have on businesses and the travelling public. There will also be discussion on the original report safety alternatives and if they are still pertinent to the crossing or if other alternatives should be investigated.

2.2 Report Updates

Based on the data gathered in the field in Task 1 and the kickoff meeting with the City, Bolton & Menk will make updates to the report to reflect changes observed in the field, pavement conditions, land use changes and other factors. During this subtask we will also review the Federal Rail Administrations Quiet Zone Calculator with the updated safety information and use this to determine thresholds and revise the crossing improvement matrix.

It has been indicated by City staff that additional options for safety measures at certain crossings will be necessary. Bolton & Menk will provide a summary of the additional options in the report and include these in the overall crossing matrix and quiet zone scoring alternatives.

2.3 Layout Updates

Based on the data gathered in the field in Task 1 and the data received from the City, Bolton & Menk will make updates to the layout of each crossing that will include the current crossing elements. Any safety measure options added to a particular crossing will have a layout drawing completed.

2.4 FRA & UPRR Coordination

Bolton & Menk will contact representatives from the Federal Rail Administration and Union Pacific Railroad to review requirements, procedures and other information pertaining to the establishment of a quiet zone. Recent changes in how UPRR handles quiet zones could impact the process and have budgetary influences as well and are not included in this agreement.

UPRR no longer completes the elements of quiet zone establishment with its own staff. They now require a preliminary engineering agreement with them for the services of a sub-consultant to perform the elements of establishing a quiet zone. These costs can vary but the initial agreement is for up to $40,000. This agreement does not include any engineering costs for the UPRR, if a safety measure chosen for a crossing require work to railroad equipment and facilities, that will require another agreement and additional fees with the UPRR.

2.5 Opinion of Probable Construction Cost Updates

Elements from the subtasks described above will be taken into account along with current bidding prices to revise the costs for constructing the proposed safety improvements. This will include cost determinations for any safety measure options added to a crossing.

2.6 Final Report

Bolton & Menk will prepare all elements of the report, preliminary layouts and opinion of costs and submit to the City Manager and Public Works Director for their review and comment. The City will facilitate meetings with adjacent property owners for their comments and Bolton & Menk will incorporate any revisions from those meetings into the final report. After all revisions have been made, the report will be submitted to the City for their use.

SCHEDULE

Bolton & Menk has the staff necessary to meet any reasonable schedule proposed by the City. Upon approval, Bolton & Menk will work with city staff and other project partners to develop a schedule and make updates as needed to ensure successful project delivery. The following preliminary schedule is provided for reference.

Task	Date
1.0 Review of Crossings, FRA & Traffic Data	May 2021
2.1 Kickoff Meeting	May 2021
2.2 Report Updates	May – June 2021
2.3 Layout Updates	May – June 2021
2.5 Opinion of Probable Cost Updates	May – June 2021
2.6 Final Report – Submit to City	July 23, 2021
2.6 Final Report – City Review & Meetings	August – September 2021 (estimated)
4.3 Final Report	2 Weeks from return

HOURS AND FEES

The estimated and associated fees for the updates to the Quiet Zone Report are provided below. Please see the schedule of fees included in the Agreement for hourly rates beyond the proposal below.

Work Task Description	Total Anticipated Fee
1.0 Crossing Review	$ 4,250
2.0 Report Updates	$15,900
HOURLY (ESTIMATED COST TO COMPLETE)	$20,150

Bolton & Menk does not have any hidden costs for services. You will not be charged separately for indirect costs including mileage, survey supplies, computer time, copies, etc.

ADDITIONAL SERVICES NOT INCLUDED

Consultant services performed other than those authorized above shall be considered Additional Services. Additional Services not included in this proposal but may be applicable to this project include:

As the project was presented to us for this proposal, it was an update to the existing report to make it current with processes and costs. We did not include a public involvement plan as part of this proposal and agreement. However, at the Client's request, Bolton & Menk can provide fees associated with a public involvement plan including meetings with adjacent landowners to discuss the proposed improvements and potential impacts and a general public information meeting.