

January 21, 2015

Via e-mail

Gerard M. Kapsiak, PE
Town Engineer
6100 South Park Avenue
Hamburg, New York 14075

**SUBJECT: Proposal for Supplemental Engineering Services
Railroad Quiet Zones and Associated Roadway Improvements – Additional Crossings
Town of Hamburg, NY**

Dear Mr. Kapsiak:

Erdman Anthony is pleased to submit the following proposal in response to your request for professional engineering services. The following sections summarize the anticipated scope of services and deliverables to be provided to the Town of Hamburg (Town) for the above-referenced project.

PROJECT UNDERSTANDING & APPROACH

The project involves the design and construction of improvements to Bayview Road (Town), Pleasant Avenue (County) and Lakeview Road (County) that will allow for extension of the previously-designated Railroad Quiet Zones in accordance with the Federal Railroad Administration's Train Horn Rule. Three separate grade crossings on CSX Transportation's Lake Shore Subdivision as well as two parallel crossings on Norfolk Southern's Lake Erie District will be improved as part of the project. Improvements will consist of installation of supplemental safety measures and incidental rehabilitation of roadway approaches, similar to those that were implemented at Rogers Road and Cloverbank Road. The existing crossing surfaces will not be improved as part of the project, although it is likely that CSX and NS may take the opportunity to improve the surfaces during the near future with their own forces and funding, given the condition of the surfaces. Signal improvements, if necessary, will be limited to installation of power out indicators as part of the project.

The project is being progressed as a Locally Administered Federal Aid (LAFA) project with the Federal share being administered by NYSDOT. The Town has received \$525,000 in State and Federal funding to design and construct the project, of which approximately \$300,000 in federal funds remains available for engineering and construction. It should be noted that if power out indicators or improvements to the detection circuitry are required to be provided as part of the project, it is possible that HSIP Rail (Section 130) funds may be available through NYSDOT for those improvements. This should be coordinated with NYSDOT as the project progresses.

SCOPE OF SERVICES

Erdman Anthony will provide the following services under the direction of a professional engineer or land surveyor, as appropriate, licensed to practice in the State of New York:

Survey Phase

- Request copies of any available record plans and subdivision maps from the Town, utility companies, ECWA, Erie County DPW.
- Perform research in the Erie County Clerk's Office for property records such as deeds and maps on the three individual Project Sites.
- The Project Sites are defined as follows:
 - Crossing at Bayview Road – topographic survey 150-ft wide strip centered on the highway extending 250 ft past the outermost tracks. (scales 700 ft ±)

- Crossing at Pleasant Avenue - topographic survey 150-ft wide strip centered on the highway extending 250 ft past the outermost tracks. (scales 700 ft ±)
- Crossing at Lakeview Road - topographic survey 150-ft wide strip centered on the highway extending 250 ft past the outermost tracks and 100 ft up Versailles Road. (scales 1,000 ft ±)
- Contact Dig Safely NY to place design ticket.
- Perform GPS survey to establish horizontal control on the facilities. Horizontal datum will be referenced to NAD 83 (2011) New York State Plane, West Zone, expressed in US Survey feet. A minimum of three control points will be set on or near the Project Site and identified on the mapping.
- Vertical control will be established by GPS. Vertical datum will be referenced to NGVD 88, expressed in US Survey feet. A minimum of three benchmarks will be set on or near the Project Site and identified on the mapping.
- Perform field work necessary to locate property evidence and visible onsite improvements, topographic features and utilities, including:
 - Finish floor elevations at accessible ground-level entrances.
 - Limits of pavement, concrete, etc.
 - Fences, trees and landscape areas.
 - Other visible site improvements.
 - Visible utilities (poles, valves, hydrants, manholes, etc.) – depths, materials and sizes of underground utilities will be based on measurements gathered from the ground surface combined information available from utility records.
- Prepare mapping at scale of 1"=20', with contours at 1-ft. intervals.

Design Phase

- Coordinate and attend 1 project kickoff meeting with the Town to review available reference materials and walk the Project Sites.
- Coordinate and attend up to 3 progress meetings with the Town, as necessary.
- Coordinate with the FRA, NYSDOT Regional Rail Coordinator and Local Project Liaison, CSX staff, NS staff, or their consultants as necessary in regard to the planned improvements.
- Furnish up to 6 sets of Preliminary Plans (40%) plus electronic files for review.
- Solicit input on the presence of threatened/endangered species from state and federal agencies.
- Prepare NEPA Checklist (FHWA) and incorporate into the Design Report.
- Prepare a NYSDOT Section 106 Project Submittal Package and submit to the Regional Cultural Resources Coordinator for determination of impacts to historic and cultural resources.
- Perform cursory investigation of pavement and soil conditions based on field observations, soil survey maps, drainage conditions, and characteristics for similar soil types.
- Perform geotechnical investigation consisting of:
 - Stake out of core locations
 - Contact Dig Safely NY to place stakeout ticket.
 - Extraction of 6 pavement cores
 - Subbase sampling to be performed to 5 feet below ground surface.
 - CBR testing in 3 of the core locations on the existing subgrade.
 - Provide traffic control consisting of advanced warning signs and cones.
- Prepare a Draft Design Report (moderate project format) and distribute up to 6 copies for review.
- Resolve and incorporate any comments received on the Draft Design Report.
- Prepare a Final Design Report and issue up to 6 copies to the Town.
- Request Article 8 Prevailing Wage Schedules from the NYSDOL and Davis-Bacon Wage Determinations from the USDOL and include both in the Contract Documents.
- Prepare any required special specifications and coordinate with the Regional Specifications Coordinator and NYSDOT Main Office for review and approval.
- Revise Preliminary Plans based on Town and Agency comments and submit up to 6 copies of the Advanced Detail Plans (90%), Draft Specifications, and Engineer's Estimate for review.

- Prepare and submit a PS&E Transmittal Memo, Right-of-Way Clearance Form, and Construction Management Plan to NYSDOT for review and approval.
- Resolve and incorporate any comments received on the Advanced Detail Plans and submit up to 6 sets of the final Plans, Specifications, and Estimate (PS&E) package for review and construction phase authorization.

Construction Phase

- N/A. This will be covered by supplemental agreement after construction phase authorization.

Design Standards

All work will be performed in accordance with the NYSDOT *Procedures for Locally Administered Federal Aid Projects* and related references, Erie County Department of Public Works Division of Highways standards, and Town of Hamburg standards.

Schedule

Erdman Anthony is prepared to begin providing the above-mentioned services within one week following the Authorization to Proceed (ATP). It is anticipated that the PS&E can be submitted by December 2015, pending cooperation from the railroads and a favorable outcome in the Town's ongoing negotiations with the County.

Assumptions

The following assumptions were made in the determination of the above-defined Scope of Services and form the basis of the anticipated schedule of work to be completed as well as the proposed fee for professional services:

- Record plans for the existing roadways, public utilities, and adjacent subdivisions are available for review. Railroad valuation maps have already been obtained.
- Topographic survey will be limited to 5 days of field time and 1 day for any necessary supplemental survey.
- Any permit application fees, access agreement fees, and publication costs will be borne by the Town.
- Preliminary Engineering Agreements will not be required with CSX or NS. If they are, all costs will be borne by the Town.
- The Town will complete and submit the NOI with accompanying Quiet Zone Calculator runs and supporting documentation.
- The NS crossing at Pleasant Avenue will be included in the project if a reduced traffic separator length can be accepted by the FRA.
- The most recent 3 years of accident data (MVA forms) will be provided by NYSDOT for use in the accident analysis.
- Traffic analysis will be limited to field observations and extrapolation of existing segment count data. If the NS crossing at Pleasant Avenue is to be included in the project, AM and PM turning movement counts will be obtained at the intersection with Versailles Road in order to obtain peak hour volumes and other pertinent data which are required in order to submit a reduced traffic separator length as an ASM to the FRA.
- Environmental review will not require preparation of a Phase 2 ESA, asbestos assessment, groundwater assessment, or similar detailed studies.
- Historic and cultural resources investigation will not require the preparation of a Phase 1 Cultural Resources Survey.
- No public information meetings will be held.
- Erdman Anthony's standard Contract Specifications boilerplate will be used in conjunction with NYSDOT Specifications for the Contract Documents.
- Roadway Worker Protection or other specialized training will not be required by CSX or NS for the survey field work.
- Railroad Protective Liability Insurance will not be required.

FEES

Erdman Anthony proposes to provide the base scope of services described above for the following lump sum fees:

(A) Survey Phase.....	\$14,100
(B) Design Phase.....	\$40,830
Total	\$54,930

If the Town does not wish to include the NS crossing at Pleasant Avenue in the project, the mapping will stop at the northerly rail at the NS crossing and all analysis and design related to the crossing and Versailles Road will be removed from the scope, thereby reducing the above lump sum fees by the following amounts:

(A) Survey Phase.....	\$1,230
(B) Design Phase.....	\$4,850
Total	\$6,080

ACCEPTANCE

This proposal and attached Standard Contract Terms and Conditions, dated July 2010, are intended to represent the entire contractual relationship between the Town of Hamburg and Erdman Anthony. Carefully review our Standard Contract Terms and Conditions and contact me with any questions or concerns.

If the Town of Hamburg concurs with and accepts the provisions of this proposal and our Standard Contract Terms and Conditions, please have an authorized representative sign this proposal in the space provided, and this proposal and attached Standard Contract Terms and Conditions shall become an executed Contract. Receipt of an original signed copy of this Contract to furnish the services described herein shall constitute Erdman Anthony's Authorization to Proceed with the work.

If you have any questions regarding the enclosed information, please contact me at your earliest convenience. We look forward to continuing our work with the Town in support of this much-needed project.

Sincerely,



Dennis J. Elias, PE

Senior Associate

ERDMAN ANTHONY

DJE

© 2014 Erdman Anthony

Enc: Standard Contract Terms and Conditions

Accepted for _____ Town of Hamburg _____ by:

(Signature)

(Printed Name)

(Title)

(Date)



STANDARD CONTRACT TERMS AND CONDITIONS
CONTROLLED DOCUMENT



**Project Name: Railroad Quiet Zones and Associated Roadway Improvements – Additional Crossings
Town of Hamburg, NY**

Section 1. Services. Erdman Anthony shall provide the Town of Hamburg (hereinafter called the Client) with the "Services" set forth in the Proposal for Services ("Proposal") with respect to the property identified in the Proposal (the "Site"), under the Terms and Conditions set forth herein. Erdman Anthony's Services will be performed on behalf of and solely for the exclusive use of Client for the purposes set forth in the Proposal and for no other purpose. The Proposal, together with these Terms and Conditions supersede all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and acknowledged by both Client and Erdman Anthony.

In performing the services required by this Agreement, Erdman Anthony shall use that degree of usual and customary professional skill and care ordinarily exercised by members of its profession under similar circumstances practicing in the same or similar locality. The standard of care shall exclusively be judged as of the time the services are rendered and not according to later standards. Notwithstanding any other provision of this Agreement, Erdman Anthony makes no express or implied warranties with regard to the Agreement or the Services performed or required by this Agreement.

In the event that Erdman Anthony and Client have not executed this Agreement, the Client's authorization to Erdman Anthony to proceed with the performance of the services set forth herein shall constitute acceptance by the Client of these Terms and Conditions.

Section 2. Construction Observation Services. Where such services are expressly included in the Proposal or in a written amendment thereto, Erdman Anthony will observe the work of the contractor at intervals agreed to in writing between Erdman Anthony and Client to determine and report to Client whether the work of the contractor is proceeding in such a way that when completed it will be in general compliance with such drawings and specifications. Such observations shall be limited only to those specific aspects of work which are identified in the Proposal or any written amendment. Erdman Anthony's Observation Services do not include exhaustive or on-site inspection of the work of the contractor nor any supervision or direction of work of any contractor or subcontractor, or their respective employees, agents or servants. Erdman Anthony will not be responsible for any contractor's or subcontractor's compliance with the provisions of any contract nor for the observation or supervision of any contractor's or subcontractor's use of personnel, machinery or equipment. Under no circumstances shall Erdman Anthony have control over, be in charge of, or be responsible for construction means, methods, techniques, sequences or procedures in connection with the work, or for the contractor(s)'s safety programs or procedures at the site.

Section 3. Opinions of Probable Construction Cost. Any cost estimates prepared by Erdman Anthony are based upon standard engineering practice. Client recognizes that Erdman Anthony has no control over the pricing in the marketplace and that Erdman Anthony cannot warrant or guarantee that Client will obtain these costs at the time of bidding. Any cost related to re-design of the project subsequent to bidding to lower the project cost will be considered additional services for which Erdman Anthony will be entitled to additional compensation.

Section 4. Invoices, Payments. Client will pay Erdman Anthony for services performed in accordance with the rates and charges set forth in the Proposal. Invoices for Erdman Anthony's services will be submitted on a monthly basis. Client shall promptly review Erdman Anthony's invoices. Any right to withhold payment based on errors or discrepancies in the invoice is waived if not identified in writing to Erdman Anthony within fourteen (14) days of Client's receipt of invoice. Payment for all invoices will be due upon receipt of the invoice by Client. In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. Payment of any invoice to Erdman Anthony shall be taken to mean that the Client is satisfied with Erdman Anthony's services, and is not aware of any deficiencies in those services. Invoice balances remaining unpaid for thirty (30) days after invoice date will bear interest from invoice date at 1.5 percent per month (or part thereof) or at the maximum lawful interest rate, if such lawful rate is less than 1.5 percent per month.

Timely payment to Erdman Anthony in accordance with the Terms and Conditions of this Agreement is a material consideration of this Agreement. Therefore, the Client's failure to make payments in accordance with this Agreement shall constitute substantial nonperformance and a cause for termination by Erdman Anthony. If Client fails to make

payment when due, Erdman Anthony may, at its option and at any time, and without waiving any other rights or claims against Client, and without thereby incurring any direct or consequential liability to Client, elect to either suspend or terminate performance of services upon ten (10) days prior written notice by Erdman Anthony to Client. Such termination or suspension shall be effective at the end of such ten (10) day notice period without further notice unless all sums due and owing as of the end of such ten (10) day notice period have been paid in full.

Erdman Anthony reserves the right to withhold stamping of drawings produced for any phase of this project under the terms of this agreement until all invoices billed up to that point in the project have been paid in full.

Section 5. Limitations of Remedies. The Client shall promptly report to Erdman Anthony any defects or suspected defects in Erdman Anthony's services of which Client becomes aware, so that Erdman Anthony may take measures to minimize the consequences of such defect. Client further agrees to impose a similar notification requirement on all contractors retained by the Client and shall require all subcontracts at any level to contain a like requirement. Failure by Client, and the Client's contractors or subcontractors to notify Erdman Anthony of such defects in a timely fashion shall relieve Erdman Anthony of the costs of remedying the defects above the sum such remedy would have cost had prompt notification had been given.

Notwithstanding any other provisions of this Agreement, neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of the fault or whether it was committed by Client or Erdman Anthony, their employees, agents, subconsultants or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

To the fullest extent permitted by law, the Client agrees to limit Erdman Anthony's liability to the Client for damages or any otherwise recoverable expenses incurred by Client as the result of the conduct of Erdman Anthony or its subconsultant under any theory of the law, to an equal of two (2) times the amount of Erdman Anthony's fee for this project. This limitation shall apply regardless of the cause of action or legal theory asserted. Client has carefully reviewed this clause and has determined that it will accept that the amount of the limitation of liability as reasonable notwithstanding the amount of damages or expenses which it might incur as the result of the conduct of Erdman Anthony or its subconsultants.

Section 6. Insurance. Erdman Anthony maintains Workers Compensation Insurance with respect to its employees with statutory required limits. Erdman Anthony also maintains Automobile Liability insurance and General and Professional Liability insurance. Certificates of Insurance evidencing such coverage will be provided to Client upon request. Client shall be responsible for all other forms of property, casualty and liability insurance coverage required for the project.

Section 7. Project Site. The Client shall be responsible for acquiring and providing timely project site access authorization for Erdman Anthony as may be needed to facilitate performance of services described in Section 1.

Section 8. Information Provided by Others. Erdman Anthony may rely upon the accuracy and completeness of any information, requirements, reports, data, surveys, and instructions provided by Client unless the Proposal expressly states otherwise.

Section 9. Documents. All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, drawings, specifications and other documents, data or information prepared by Erdman Anthony, in any form including machine readable format (collectively "Documents") are instruments of Erdman Anthony's services and shall remain the sole property of Erdman Anthony. Erdman Anthony retains all ownership and all other rights, including copyrights, in all such documents.

The documents are prepared for use on this Project and at the Site identified in the Proposal only and are not appropriate for use on any other project or at any other site, or for any purpose other than as defined by the Scope of Services, except by the agreement in writing with the appropriate compensation to Erdman Anthony.

Where Erdman Anthony agrees to supply some or all of the Documents in machine readable format (hereinafter "machine readable media"), the parties understand and agree that any Documents supplied in such machine readable

format are so supplied as a convenience to the recipient. Such documents are not intended to replace the printed forms of such Documents. The content of the documents supplied by Erdman Anthony in printed form shall govern over the contents of Documents supplied in machine readable format. The recipient shall be solely responsible for comparing the output of the machine readable media with the printed Documents designated by Erdman Anthony as the contract documents and determining the accuracy of such output. Recipient shall only use the output of machine readable media for the limited purpose agreed to by Erdman Anthony and shall not alter, mediate or change the contents of such machine readable media in any way, or transfer to others, without the express written approval of Erdman Anthony.

Any use of the documents or the information or data contained therein, in violation of this Section or any alteration or modification of such Documents or the information or data contained therein, without the express written consent of Erdman Anthony is expressly prohibited. Such prohibited use is at the sole risk of the user and Erdman Anthony is released from any liability for damages arising from such use. Client shall indemnify and save harmless Erdman Anthony from and against any and all claims, damages, judgments, demands, liabilities, costs or expenses (including reasonable attorney's fees and other defense costs) arising from any changes made by anyone other than Erdman Anthony or from re-use of the documents without prior written consent of Erdman Anthony.

Section 10. Clients Duty to Notify Erdman Anthony of Hazards. Client represents and warrants that it will provide Erdman Anthony with any and all information known to or suspected by Client with respect to 1) the existence or possible existence at, on or under the Site of any hazardous materials, or pollutants and 2) to disclose the location and quantity of all previously installed asbestos containing materials or presumed asbestos containing materials in their facility.

If unanticipated potentially hazardous materials, pollutants or asbestos are encountered during the course of the work, Erdman Anthony shall have the right 1) to suspend its work immediately and 2) to terminate the work described in the Proposal, upon ten (10) days of Erdman Anthony's written notice of intent to terminate, unless Erdman Anthony and Client agree upon a mutually satisfactory amendment to the Proposal that may include a revision of the scope of services, adjustment of budget estimates, revised Terms and Conditions and revised fees. Client shall remain liable for and shall pay all fees and charges incurred under the provisions of the Proposal through the date of termination, notwithstanding Client and Erdman Anthony not having reached a new, mutually satisfactory, revision of their agreement.

Section 11. Dispute Resolution. In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the Client and Erdman Anthony agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise. The parties shall share the mediator's fee equally. The party initiating the mediation shall be liable for any filing fee. In no event shall the demand for mediation be made after the date when institution of legal proceedings would be banned by the applicable statute of limitations.

The Client and Erdman Anthony further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

Section 12. Governing Law. The Client and Erdman Anthony agree that all disputes arising out of or in any way connected to this Agreement, its validity, interpretation and performance, and remedies for breach of contract, or any other claims related to this Agreement shall be governed by the laws of the State in which the Site is located.

Section 13. Firm Publicity. Erdman Anthony has the right to photograph the above-named project and to use the photos in the promotion of the professional practice through advertising, public relations, brochures or other marketing materials. Client agrees that Erdman Anthony has the authority to utilize its name as a Client and general description of the project work or service performed as references. Client hereby authorizes Erdman Anthony to place a sign on the property, at Erdman Anthony's expense and subject to local permitting requirements, during the design and construction phases to advertise that Erdman Anthony had provided professional services for the project.

Section 14. Assigns. Neither the Client nor Erdman Anthony may delegate, assign, sublet, or transfer his duties or interest (including any claims that arise here) in this Agreement without written consent of the other party. Such consent shall not be unreasonably withheld. Subcontracting to subconsultants normally contemplated by the Consultant shall not be considered an assignment for purposes of this Agreement.

Section 15. Third Party Beneficiaries. Nothing contained in this Agreement shall create a contractual relationship with a cause of action in favor of a third party against either the Client or Erdman Anthony.

Section 16. Severability. In the event that any provisions herein shall be deemed invalid or unenforceable, the other provisions hereof shall remain in the full force and effect, and binding upon the parties hereto.

Section 17. Termination, Suspension. This Agreement may be terminated or suspended by either party upon ten days written notice should the other party fail substantially to perform in accordance with its terms. In the event of suspension under these conditions, neither party shall have any liability to the other for any delay or damage as a result of such suspension. This Agreement may be terminated by the Client upon at least ten days written notice to Erdman Anthony in the event that the Project is permanently abandoned. Erdman Anthony shall be compensated for the services performed up to the time written notice of termination or suspension is actually received, together with reimbursable expenses then due and reasonable termination or suspension expenses directly associated with the termination or suspension. Erdman Anthony's commitments as set forth in this Agreement are based on the expectation that all of the services described in the Proposal will be provided. In the event Client later elects to reduce Erdman Anthony's scope of services, Client hereby agrees to release, hold harmless, and indemnify Consultant from any and all claims, damages, losses or costs associated with or arising out of such reduction in services.

END OF STANDARD CONTRACT TERMS AND CONDITIONS.