PROFESSIONAL SERVICE AGREEMENT
COUNCIL BLUFFS MULTIMODAL CONNECTION PEL PHASE I
CITY PROJECT NUMBER 2023-47
CITY OF COUNCIL BLUFFS, IOWA

Ms. Kim Riebe
Project Manager
City of Council Bluffs
209 Pearl Street
Council Bluffs, IA 51503

Dear Ms. Riebe:

FELSBURG HOLT & ULLEVIG (FHU) proposes to provide professional engineering and planning services for the 2023-47 Council Bluffs Multimodal Connection PEL Phase I project.

Scope of Services

FELSBURG HOLT & ULLEVIG TO PROVIDE THE FOLLOWING SERVICES as identified in the Scope of Services Attachment A:

Task 1 - Project Management & Administration
Initiate and monitor project schedules, workload assignments and internal cost controls throughout the project. Also included are efforts to prepare and process invoices and monthly progress reports; prepare project correspondence with the City; and maintain project records. Attend project meetings with the City to review progress. Includes meeting preparation and distribution of meeting minutes.

Task 2 – Public Outreach & Presentations
Public outreach for the Study will be led by the City of Council Bluffs and MAPA with support from the Consultant. The Consulting Team will develop a Public Involvement Action Plan that will clearly lay out the details of the major public involvement tasks that will take place throughout the course of the project. Includes stakeholder engagement (STAC) and FTA updates.

Task 3 – Existing Conditions Inventory & Analysis
The Consulting Team will produce an assessment of the existing transportation network to support work with Task 4. Using available existing data and supplemental data collected, Consultant will assess the current conditions and characteristics in the Study Area as they relate to the transportation network, traffic, safety, built and natural environmental conditions, and land use and development characteristics and trends. The assessment will include any future approved development and programmed improvements and resulting conditions that would formulate the planning context and the basis for the No-Action Alternative. The assessment will document environmental resources and other characteristics within the Study Area that will be affected by the proposed alternatives.

Task 4 – Study Development
It is the intention of the City of Council Bluffs and MAPA that all appropriate planning decisions resulting from this study meet statutory requirements such that they may be **adopted** or **incorporated** by reference within NEPA as defined within 23 USC 168. The Consultant shall identify and document the

intended approach which will be coordinated with lead, participating, and cooperating agencies prior to subsequent steps in this task. The Consultant shall reference Section 3.1.1.1 of the Nebraska Department of Transportation (NDOT) Planning and Environment Linkages Guidance Document (November 2022) and other relevant guidance documents as provided by Iowa DOT and FTA Region 7.

Task 5 – Deliverables
This task will be completed as part of Phase 2 of the project. No work is scoped for Task 5 in this contract.

Fee Schedule

The consultant proposes to conduct these services on a "cost plus fixed fee" basis. The contract will be hourly, not to exceed a negotiated maximum. Hours for each Task, a staffing plan, and direct expenses are provided in Attachment B, the independent cost estimate.

Scope of Service	*Fee Basis*
Task 1 - Project Management and Administration	Hourly, not to exceed negotiated maximum.
Task 2 – Public Outreach and Presentations	Hourly, not to exceed negotiated maximum.
Task 3 – Existing Conditions Inventory & Analysis	Hourly, not to exceed negotiated maximum.
Task 4 – Study Development	Hourly, not to exceed negotiated maximum.
Task 5 – Deliverables	Not included in this scope

Actual project fees for Phase 1 are provided in Attachment B, the independent cost estimate.

Engineering Contract Provisions

A. INDEMNIFICATION

The **ENGINEER** agrees to indemnify and save harmless the City, its officers, agents, and employees from and against any and all claims including reasonable attorneys' fees and defense costs arising out of the negligent acts, errors, or omissions of the **ENGINEER**, its officers, agents, and employees in the execution of the services specified in this Agreement.

In recognition of the relative risks and benefits of the project to both the City and **ENGINEER**, the risks have been allocated such that the City agrees, to the fullest extent permitted by law, to limit the liability of the **ENGINEER** and their sub-consultants to the **OWNER** and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of the **ENGINEER** and their sub-consultants to all those named shall not exceed $2,000,000.00. Such claims and causes include negligence, professional errors or omissions, strict liability, breach of contract or warranty.

B. INSURANCE

The **ENGINEER** shall maintain insurance to protect the **ENGINEER** from claims under Worker's Compensation Acts; claims due to personal injury or death of any employees or any other person; claims due to injury or destruction of property; and claims arising out of errors, omissions, or negligent acts for the ENGINEER is legally liable. The amounts and extent of such insurance is as follows:

1. Professional Liability - $2,000,000 each claim; $2,000,000 aggregate
2. Vehicle Coverage/ Bodily Injury - $1,000,000 combined single limit (each accident)
3. Worker's Compensation - $100,000 each accident or statutorily required minimum
4. General Liability - $1,000,000 each occurrence and $2,000,000 aggregate

C. ARBITRATION

Any controversy or claim arising out of this Agreement may, if both parties agree, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association.

The cost of the arbitration, if any, will be divided equally between the **OWNER** and the **ENGINEER**.

D. ENGINEER'S RESPONSIBILITY

The **ENGINEER** shall be responsible for the professional quality and technical accuracy of all services furnished by the **ENGINEER** under this Agreement, except for that work provided by **OWNER**. The **ENGINEER** shall, without additional compensation, correct or revise any error or deficiencies in his work. Approval of the **OWNER** of any such work shall not in any way relieve the **ENGINEER** of responsibility for the technical accuracy and adequacy of said services. The **OWNER's** review, approval or acceptance of, or payment for any of the services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

Special Provisions

A. RESPONSIBILITIES OF THE OWNER

The **OWNER** shall provide and make available to the **ENGINEER**, 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 **ENGINEER** shall remain the property of the **OWNER** and will be returned upon completion of its services.

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

B. EXTRA WORK

The **OWNER** may desire to have the **ENGINEER** 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 **OWNER**. 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.

C. TIME OF BEGINNING AND COMPLETION

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

D. PAYMENT

Unless otherwise provided herein, **ENGINEER** 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. If any portion of, or an entire account remains unpaid 90 days after billing, the **OWNER** shall pay all costs of collection, including reasonable attorney's fees.

E. DELAYS

If the **ENGINEER** is delayed at any time in the progress of work by any act or neglect of the **OWNER** or its agents, employees or contractors, or by changes in the work, or by extended reviews by the **OWNER**, fire, unavoidable casualties, or by any causes beyond the **ENGINEER'S** control, the time schedule shall be extended for a reasonable length of time, and **ENGINEER'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.

F. OWNERSHIP OF DOCUMENTS

All documents and other materials prepared by the **ENGINEER** in connection with this project are the **OWNER'S** sole property in which the **ENGINEER** has no proprietary or other rights or interests. All reports, documents, information, and any materials or equipment furnished to the **ENGINEER** by the **OWNER** shall remain the sole property of the **OWNER**. Nothing written in this paragraph, however, will be interpreted to forbid the **ENGINEER** from retaining a copy of information for its files.

The drawings, specifications, reports, records and other products developed by the **ENGINEER** referenced above, once provided to the **OWNER** shall be considered public records and as such shall be subject to the provisions of Chapter 22 of the Iowa Code. Any documents the **ENGINEER** considers confidential pursuant to the provisions of Chapter 22 shall be specifically identified as such, and a reference to the specific provision of Chapter 22 that is being relied upon shall be identified.

G. TERMINATION

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

H. SUCCESSORS AND ASSIGNS

The **OWNER** and the **ENGINEER** 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.

I. 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 **ENGINEER** 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.

J. 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 Proposal or 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.

K. ACCURACY OF SERVICES

The **ENGINEER** 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 **ENGINEER**, an error or omission is discovered within a reasonable time, the **ENGINEER** shall be responsible for correction of any work which must be removed or altered to meet the project requirements, provided the **ENGINEER** is given a reasonable opportunity to make remedial recommendations and to correct or arrange for the correction of the work itself. The **ENGINEER** 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 **OWNER** understands that the **ENGINEER** 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 **ENGINEER'S** qualifications, and experience. The **ENGINEER** makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

L. COMPLIANCE AND REGULATIONS

During the performance of this contract, the engineer, for itself, its assignees and successors in interest (hereinafter referred to as the **ENGINEER**) agrees as follows:

1. Compliance with Regulations: The Engineer shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination: The Engineer, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Engineer shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "B" of the Regulations.

3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Engineer for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Engineer of the Engineer 's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

4. Information and Reports: The Engineer shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Council Bluffs, the Iowa Department of Transportation or Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of an engineer is in the exclusive possession of another who fails or refuses to furnish this information, the Engineer shall so certify to the City of Council Bluffs, the Iowa Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the Engineer's noncompliance with the nondiscrimination provisions of this contract, the City of Council Bluffs shall impose such contract sanctions as it, the Iowa Department of Transportation or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

    a. withholding of payments to the Engineer under the contract until the Engineer complies; and/or,
    b. cancellation, termination or suspension of the contract, in whole or in part.

6. Incorporation of Provisions: The Engineer shall include the provisions of Paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Engineer shall take such action with respect to any subcontract or procurement as the City of Council Bluffs, the Iowa Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that, in the event an engineer becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Engineer may request the City of Council Bluffs or the Iowa Department of Transportation to enter into such litigation to protect the interests of the City of Council Bluffs or the Iowa Department of Transportation; and, in addition, the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

(signature page to follow)

Dated this_____ day of _____, 20_____.

CITY OF COUNCIL BLUFFS, IOWA
CONTRACTING AUTHORITY

ATTEST:

_____
Jodi Quakenbush, City Clerk

OWNER

By: _____
Matthew J. Walsh, Mayor

ATTEST:

_____
Holly Buck, Principal

ENGINEER
FELSBURG HOLT & ULLEVIG

By: _____
Mark Meisinger, Principal