MASTER AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement, made this _____day of_____, 2021, by and between The City of Council Bluffs, Iowa hereinafter called the **CLIENT**, and The Schemmer Associates Inc., hereinafter called the **CONSULTANT**, collectively referred to as the Parties.

From time-to-time **CLIENT** may request that **CONSULTANT** provide professional services for one or more Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

WITNESSETH: That for and in consideration of the mutual covenants and agreements hereinafter contained, the Parties hereto have mutually agreed and do agree as follows:

ARTICLE 1. SERVICES BY THE **CONSULTANT**

1.1 **CONSULTANT'S** services will be detailed in a duly executed Task Order for each Specific Project. The general format of a Task Order is shown in Exhibit "A" to this Agreement. Each Task Order will indicate the specific services to be performed and deliverables to be provided.

1.2 This Agreement is not a commitment by **CLIENT** to **CONSULTANT** to issue any Task Orders.

1.3 **CONSULTANT** shall not be obligated to perform a prospective Task Order unless and until **CLIENT** and **CONSULTANT** agree to particulars of the Specific Project, including the scope of **CONSULTANT'S** services, time for performance, **CONSULTANT'S** compensation, and all other appropriate matters.

ARTICLE 2. RESPONSIBILITIES OF THE **CLIENT**

2.1 The **CLIENT** shall provide and make available to the **CONSULTANT**, for their 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.

2.2 The **CLIENT** shall designate a representative who shall be fully acquainted with the Project and who shall have authority to render decisions relative to the **CONSULTANT'S** services as necessary for the orderly progress of the work. The representative shall be responsible for receiving and processing all information and documentation relative to the project on behalf of the CLIENT.

2.3 The **CLIENT** shall establish and maintain procedures for receiving, reviewing, recording, and acting on all information, documentation, payments, and acceptances of work and services relative to this project in an expeditious manner.

2.4 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.

ARTICLE 3. TIME OF PERFORMANCE

The services to be provided under this Agreement shall, unless otherwise provided, be commenced upon execution of this Agreement, and be performed in general accordance with the information provided in **Exhibit A**. An individual schedule will be developed for each Task Order.

ARTICLE 4. COMPENSATION FOR SERVICES

The **CLIENT** agrees to compensate the **CONSULTANT** in accordance with the following schedule, and the Terms and Conditions of this Agreement:

4.1 For Basic Services as described in Article 1, Compensation shall be made at the lump sum, direct labor or hourly rates in accordance with each Task Order.

4.2 Unless otherwise provided herein, **CONSULTANT** shall submit invoices for Basic, Additional or Special Services and for Direct Expenses each month for work actually performed. The **CLIENT** agrees to pay the **CONSULTANT** within 60 days of the billing date. 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%. In the event any portion of or all of an account remains unpaid 90 days after billing, the **CONSULTANT** may upon five (5) calendar days written notice to the **CLIENT** suspend performance of services under this Agreement. The **CONSULTANT** shall have no liability whatsoever to the **CLIENT** for any costs or damages as a result of such suspension. The **CLIENT** shall pay all costs of collection, including reasonable attorney's fees.

ARTICLE 5. 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, relocation of other expenses incidental to such delays.

ARTICLE 6. OWNERSHIP OF DOCUMENTS

All drawings, specifications, reports, records, and other work products developed by the **CONSULTANT** in connection 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**.

ARTICLE 7. INSURANCE

The **CONSULTANT** shall maintain insurance to protect the **CONSULTANT** 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 **CONSULTANT** is legal liable. The amounts and extent of such insurance is as follows:

7.1 Professional Liability: $2,000,000 each claim; $2,000,000 aggregate

7.2 Vehicle Coverage, Bodily Injury: $1,000,000 combined single limit (each accident)

7.3 Worker's Compensation: $100,000 each accident

7.4 General Liability: $1,000,000 each occurrence and $2,000,000 aggregate

ARTICLE 8. 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.

ARTICLE 9. JOBSITE SAFETY

Neither the professional activities of the **CONSULTANT** nor the presence of the **CONSULTANT** or his employees and subconsultants at a construction site, shall relieve the General Contractor(s) or its subcontractor(s), and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the Contract Documents and any health or safety precaution required by any regulatory agencies.

The **CONSULTANT** and his personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. Except for employees of the **CONSULTANT**, the **CLIENT** agrees that the General Contractor(s) or its subcontractor(s) are responsible for jobsite safety.

ARTICLE 10. GOVERNING LAW

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

ARTICLE 11. 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.

ARTICLE 12. 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 **CONSULTANT** 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.

ARTICLE 13. 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 shown below. 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.

THE SCHEMMER ASSOCIATES INC.
928 Valley View Drive, Suite 12
Council Bluffs, IA 51503

CITY OF COUNCIL BLUFFS, IOWA
209 Pearl Street
Council Bluffs, IA 51503

ARTICLE 14. STANDARD OF CARE AND INDEMNIFICATION

14.1 The **CONSULTANT** shall use the professional skill and judgement ordinarily provided by members of the same professional on a project of similar size, location, scope and complexity, 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 correcting said error or omission 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. Additional analysis elements for a study or changes in design components not related to the errors and/or omissions are examples of value-added services.

14.2 Approval of **CLIENT** of any work shall not in any way relieve **CONSULTANT** of responsibility for the technical accuracy and adequacy of said services. The **CLIENT'S** review, approval or acceptance of, or payment for any of the services shall not operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

14.3 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 over the Contractor's method of pricing, and that the opinions of probable construction costs provided herein are to be made on the basis of 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.

14.4 The **CONSULTANT** agrees to indemnify and save harmless the City, its officers, agents, and employees from and against any and all claims including reasonable attorney's fees and defense costs arising out of the negligent acts, errors, or omissions of the CONSULTANT, 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 **CLIENT** and **CONSULTANT**, the risks have been allocated such that the **CLIENT** agrees, to the fullest extent permitted by law, to limit the liability of the **CONSULTANT** and their sub-consultants to the **CLIENT** 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 **CONSULTANT** 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.

ARTICLE 15. DISPUTE RESOLUTION (ARBITRATION)

CLIENT and **CONSULTANT** agree that 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 **CLIENT** and the **CONSULTANT**.

ARTICLE 16. RESPONSIBILITIES OF THE **CONSULTANT**

The **CONSULTANT** 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 **CLIENT**. The **CONSULTANT** shall, without additional compensation, correct or review any error or deficiencies in his work. Approval of the **CLIENT** of any such work shall not in any way relive the **CONSULTANT** of responsibility for the technical accuracy and adequacy of said services. The **CLIENT'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 any cause of action arising out of the performance of this Agreement.

ARTICLE 17. COMPLIANCE WITH REGULATIONS

The **CONSULTANT** 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.

ARTICLE 18. NONDISCRIMINATION

The **CONSULTANT**, 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 **CONSULTANT** 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.

ARTICLE 19. SOLICIATIONS FOR SUBCONTRACTS, INCLUDING PROCUREMENT OF MATERIALS AND EQUIPMENT:

In all solicitations either by competitive bidding or negotiation made by the **CONSULTANT** 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 **CONSULTANT'S** obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

ARTICLE 20. INFORMATION AND REPORTS

The **CONSULTANT** 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 **CONSULTANT** 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.

ARTICLE 21. SANCTIONS AND NONCOMPLIANCE

In the event of the **CONSULTANT'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:

21.1 withholding of payments to the **CONSULTANT** under the contract until the **CONSULTANT** complies; and/or,

21.2 cancellation, termination or suspension of the contract, in whole or in part.

ARTICLE 22. INCORPORATION OF PROVISIONS

The **CONSULTANT** shall include the provisions of Articles (16) through (21) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The **CONSULTANT** 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 **CONSULTANT** 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 **CONSULTANT** may request the United States to enter into such litigation to protect the interests of the United States.

ACKNOWLEDGMENT OF COMPLETE AGREEMENT: This Agreement includes pages consecutively numbered 1 through 8, and the attachments thereto, identified as:

Exhibit A – Task Order

IN WITNESS WHEREOF, we the contracting parties, by our respective and duly authorized agents, hereto affix our signatures and seals in duplicate this _____ day of _____, 2021.

City of Council Bluffs
"CLIENT"

BY: _____

NAME: _____

TITLE: _____

ADDRESS: _____

_____

The Schemmer Associates Inc.
"CONSULTANT"

BY: Chas D Huddleston

NAME: Charles D. Huddleston

TITLE: Exec. Vice President

ADDRESS: 928 Valley View Drive
Council Bluffs IA 51503

Exhibit – A

TASK ORDER

In accordance with Paragraph 1.1 of the Master Agreement Between _____ ("CLIENT") and The Schemmer Associates Inc. ("CONSULTANT") for Professional Services dated _____, 2021, CLIENT and CONSULTANT agree as follows:

TASK ORDER NUMBER:
PROJECT NAME:

1. PROJECT DESCRIPTION:
2. SCOPE OF SERVICES:
3. TASK ORDER SCHEDULE:
4. COMPENSATION:
5. OTHER:

This Task Order is executed this _____ day of _____, 2021.

CLIENT:	_____	CONSULTANT:	_____
BY:	_____	BY:	_____
PRINT NAME:	_____	PRINT NAME:	_____
TITLE:	_____	TITLE:	_____
ADDRESS:	_____	ADDRESS:	_____
	_____		_____